

1 UNITED STATES DISTRICT COURT  
 2 EASTERN DISTRICT OF MISSOURI  
 3 EASTERN DIVISION  
 4  
 5 RUSSELL SCOTT FARIA, )  
 6 )  
 7 Plaintiff, )  
 8 vs. ) Case No. 4:16-CV-01175-JAR  
 9 )  
 10 SERGEANT RYAN J. McCARRICK, )  
 11 et al., )  
 12 )  
 13 Defendants. )  
 14  
 15 DEPOSITION OF MICHAEL MERKEL  
 16  
 17 Taken on behalf of Plaintiff  
 18 September 28, 2017  
 19  
 20  
 21  
 22  
 23 COURT REPORTING ASSOCIATES  
 24 P.O. Box 440014  
 25 St. Louis, Missouri 63144  
 (314) 961-6306

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 7 SERGEANT RYAN J. McCARRICK, )  
 8 et al., )  
 9 Defendants. )  
 10  
 11 DEPOSITION OF MICHAEL MERKEL, produced,  
 12 sworn and examined on September 28, 2017, on behalf of  
 Plaintiff, between the hours of nine o'clock in the  
 13 forenoon and five o'clock in the afternoon of that day,  
 at the offices of Barklage, Brett & Hamill, P.C., 211  
 North Third Street, St. Charles, Missouri 63301, before  
 TAMI L. BRUDER-KSIOZK, a Registered Professional  
 Reporter, Certified Court Reporter and a Notary Public  
 within and for the State of Missouri.

## 14 APP E A R A N C E S

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 St. Louis, Missouri 63144

25 (Appearances Continued)

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## 1 APPEARANCES CONTINUED

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 11 2010 South Big Bend Boulevard  
 St. Louis, Missouri 63117

## 12 Also present:

13 Plaintiff Russell Scott Faria  
 14 Defendant Leah Askey

Exhibit

28

1 IT IS HEREBY STIPULATED AND AGREED, by and  
 2 between counsel for the Plaintiff and counsel for the  
 3 Defendants, that this deposition may be taken in  
 4 shorthand by Tami L. Bruder-Ksioszk, a Notary Public,  
 5 Registered Professional Reporter and Certified Court  
 6 Reporter, and afterwards transcribed into typewriting;  
 7 and the signature of the witness is expressly reserved.  
 8 \* \* \* \* \*

9 MICHAEL MERKEL,  
 10 of lawful age, produced, sworn and examined on behalf of  
 11 the Plaintiff, deposes and says:

## 12 DIRECT EXAMINATION

## 13 QUESTIONS BY MR. SCHOCK:

14 MR. SCHOCK: Mr. Merkel, I'm Bevis Schock.  
 15 It's our custom to announce our appearances today, so --  
 16 MR. SWANSON: Nathan Swanson for Defendant  
 17 or Plaintiff.

18 THE PLAINTIFF: Russell Faria, Plaintiff.

19 MR. HAMIL: John -- John Hamill, Defendant  
 20 County.

21 MR. PLEBAN: Chet Pleban for Detective  
 22 Merkel.

23 MR. HEIGELE: Chris Heigele on behalf of  
 24 Defendant Askey, and Defendant Askey is also present.

25 MR. RETTER: Jason Retter for Defendant

5

1 Merkel.

2 THE WITNESS: Mike Merkel.

3 Q. (By Mr. Schock) Thanks. Would you state  
 4 your full name?

5 A. Michael Allen Merkel.

6 Q. Thanks.

7 A. Yes, sir.

8 Q. Sir, you were at the depo about three weeks  
 9 ago of Mr. Faria, right?

10 A. Yes, sir.

11 Q. Have you ever been deposed before?

12 A. Prior to that?

13 Q. Yes.

14 A. On occasion.

15 Q. Okay. So I'm going to be real quick on the  
 16 rules, just three of them; one is, if you don't  
 17 understand me, will you let me know?

18 A. Yes.

19 Q. Will -- will you work with me to try to  
 20 take turns speaking?

21 A. Yes, sir.

22 Q. And will you let me know if you need to  
 23 take a break --

24 A. Absolutely.

25 Q. -- for any reason any time?

6

1 A. Yes.  
 2 Q. Sir, I want to talk to you about obviously  
 3 the Faria murder, but I want to start with your training  
 4 and background --

5 A. Okay.

6 Q. -- and your current position.

7 A. Okay.

8 Q. So where do you work now?

9 A. I work for the Lincoln County Sheriff's  
 10 Office in Troy, Missouri.

11 Q. Your position?

12 A. I'm a captain with the Sheriff's Office.  
 13 I'm a criminal investigations division commander.

14 Q. How long have you been in that post?

15 A. Oh, almost three years, I believe. Two or  
 16 three years.

17 Q. So this murder was in 2011, so since the  
 18 promotion, significantly after that?

19 A. Yes, sir.

20 Q. What was your post, your position, your  
 21 title, you might say, at the time of the murder?

22 A. I believe I was a general crimes detective.  
 23 If not, I was assigned to the Detective Bureau as either  
 24 a crime scene investigator and a general crimes  
 25 detective or one capacity or another.

7

1 Q. Okay. So you worked as a detective as  
 2 opposed to a patrol officer?

3 A. Yes, sir.

4 Q. How long had you been in that line of work  
 5 with that distinction?

6 A. At that point, since about 2007, maybe  
 7 mid-2007.

8 Q. So then roughly four years?

9 A. Approximately. Sure.

10 Q. How long had you been a police officer  
 11 before that, POST certified?

12 A. My first -- I was POST certified in  
 13 December of 2002, and my first job wasn't until February  
 14 1st of 2013.

15 Q. 2013 can't --

16 A. '13.

17 Q. -- be right.

18 A. Yes, because I was POST certified December  
 19 13th. Oh, I only remember that because it was Friday  
 20 the 13th of 2002. I'm sorry. 2003. So --

21 Q. Okay.

22 A. -- about three months -- two, three months.

23 Q. Okay. No problem. I knew it was just one  
 24 of those. Sometimes --

25 A. Just a number.

8

1 Q. Sometimes in these things we make a  
2 misstatement --

3 A. Right.

4 Q. -- and we just correct them.

5 A. Okay.

6 Q. When you were in your position at the time  
7 of the Faria murder, what were your duties?

8 A. My initial duties were to respond to the  
9 scene, make an overall assessment.

10 Q. Okay. Hang -- hang on. Are you talking  
11 now about any crime that you were assigned to or this  
12 crime, because I want any crime first?

13 A. Oh, any crime?

14 Q. Yeah.

15 A. It was -- it would be a general crimes  
16 detective. So, I mean, we would do crimes against  
17 persons, crimes against property, really anything that  
18 is a felony complaint that is assigned to the Detective  
19 Bureau.

20 Q. Who would assign out the work, say, You're  
21 going on this one, you're going on that one, to  
22 different guys?

23 A. I'm not sure who actually assigned it. I  
24 can't remember who would have been my supervisor at the  
25 time. I -- I don't -- I wouldn't -- I don't know. I

9

1 was just a general crimes detective, and if I had a case  
2 assigned to me, it would show up in my queue, and I  
3 would work it, so --

4 THE REPORTER: It would what?

5 THE WITNESS: It would show up in my queue.

6 So --

7 Q. (By Mr. Schock) Oh, you had some kind of a  
8 computer --

9 A. Yeah, --

10 Q. -- that tells you what to work on?

11 A. -- like a program.

12 Q. Okay.

13 A. And if it was assigned out, it would just  
14 come to me.

15 Q. We -- we're gonna --

16 MR. RETTER: Just one at a time. Bevis is  
17 going to tell you.

18 THE WITNESS: Okay.

19 MR. SCHOCK: Exactly.

20 MR. HEIGELE: And it might be his fault.

21 MR. SCHOCK: Absolutely. I'll take all the  
22 blame. Just put it right on me.

23 Q. (By Mr. Schock) Sir, so you would get  
24 assigned a job, I'm talking in general now, in your  
25 queue?

1 A. Yes, sir.

2 Q. And then lay out a little bit how the  
3 course of a routine investigation would go and what your  
4 role would be.

5 A. I think every investigation would -- I  
6 mean, it -- it would be different. You have to consider  
7 every factor of it. So you would take -- you would take  
8 your report and you would contact your victim, and then,  
9 I mean, from there, it -- it really varies. If you got  
10 a crime against property, you review the report and you  
11 look at the details of it and follow-up on any leads you  
12 may have.

13 You may have a different course of action if you  
14 have a crime against persons, if you need to do a  
15 forensic interview with a child, or, you know, obtain  
16 records through subpoenas or anything like that. I  
17 mean, it -- really, it's case by case.

18 Q. Fair enough. Is the idea to try to  
19 understand what crime occurred first?

20 A. Yes.

21 Q. Understand, if you can, who did it --

22 A. Yes.

23 Q. -- second?

24 A. Yes.

25 Q. Understand how to gather or actually engage

11

1 in gathering evidence that is relevant to this crime?

2 A. Yes.

3 Q. And at some point approach the prosecuting  
4 attorney for a charge to be issued; is that --

5 A. Present the information to them, yes, to  
6 see -- I mean, I wouldn't decide what charges would be  
7 issued, but I would present all the information that I  
8 have, so --

9 Q. Right. I mean, that's a -- that's a very  
10 routine process, right?

11 A. Sure.

12 Q. It would kind of happen at the end of the  
13 investigation or at least the end of the beginning of  
14 the investigation?

15 A. Sure.

16 Q. So let's talk about this situation.

17 A. Okay.

18 Q. How did it first come to your attention  
19 that there was a crime on Sumac Drive?

20 A. I -- I can't recall who specifically called  
21 me, but I was notified that there was an incident at  
22 that address, I don't know what the address is now, but  
23 at Mr. Faria's home, and that the Patrol Division was  
24 asking that someone from the Detective Bureau respond.

25 Q. Was that still in the evening of the 27th

12

1 of December? And I will submit to you that -- I know  
2 you probably don't have all these dates in your mind.  
3 The murder happened on the 27th of December 2011. Do  
4 you agree with that? Sound right?

5 A. That sounds right. Sure.

6 Q. Okay. So my question is, did -- did --  
7 what time in terms of when Mr. Faria made his 911 call  
8 around 9:40 --

9 A. Okay.

10 Q. -- did you get the word that you needed to  
11 get to work on this?

12 A. It -- it would have been a short time after  
13 that. I'm -- I don't remember exactly what time it was,  
14 but it -- I'll say it may have been within an hour.

15 Q. And were you on your shift, on duty, or did  
16 you have to come in to work on that?

17 A. No. I -- I would have had to come in  
18 because my hours were Monday through Friday like 8:30 to  
19 4:30 or 8:30 to 5:00.

20 Q. Okay. So did you get a call at home or  
21 something?

22 A. I -- I don't recall specifically. I -- I  
23 don't have a home phone all the time, so I --

24 Q. So wherever you were, you got a call, they  
25 had your number, and you responded?

13

1 A. Yes.

2 Q. Did you -- were you non -- were you plain  
3 clothes?

4 A. I wasn't a uniformed patrol officer. I  
5 would have had something with insignia on, so, I mean,  
6 that's not really plain clothes to me.

7 Q. I understand. Do you remember what you  
8 were told in that call and any of the details?

9 A. In the phone call? No. Not specifically.  
10 No.

11 Q. But the idea was that you were to go to  
12 Sumac Drive directly?

13 A. If -- if that's the address, yes, sir.

14 Q. Okay. It is. And did you do that?

15 A. Yes, sir.

16 Q. Take some time to get dressed or whatever  
17 if you weren't in -- in your insignia?

18 A. More than likely, sure.

19 Q. And do you know what time you got there?

20 A. I do -- I do not.

21 Q. Okay. When you got there, tell me what you  
22 saw going on when you first drove up.

23 A. There -- there would have been other  
24 emergency services there. I don't recall who all was  
25 there.

14

1 Q. Okay. One -- one -- one second. You said  
2 there would have been, and I am kind of interested --  
3 and maybe you just said that as a form of speech, but I  
4 want to know whether there were emergency vehicles  
5 there.

6 A. Okay. I don't recall exactly what -- what  
7 emergency vehicles were there or -- or who they were  
8 specifically.

9 Q. But there were some?

10 A. There were some there. Yeah.

11 Q. Do you think there were any fire department  
12 vehicles there?

13 A. I -- I don't know.

14 Q. And do you remember some of the -- the  
15 identity of some of the people who were there?

16 A. To the best of my recollection, I remember  
17 a deputy, and I'm not sure if he was a sergeant at the  
18 time, but -- so say two deputies.

19 Q. Who are?

20 A. Chris Hollingsworth and Michael Pirtle.

21 Q. Were there others, but you just don't know  
22 their names?

23 A. There -- there were other people. I don't  
24 know if they were deputies or firemen or EMS or --

25 Q. Any -- any idea how many?

15

1 A. No.

2 Q. Okay. Would you say more than three or  
3 four?

4 A. Well, there would have been at least three  
5 if there was two deputies, so sure.

6 Q. Okay. More than ten?

7 A. I don't know.

8 Q. Okay. Fair enough. Do you know whether  
9 you saw Mr. Faria there at that time when you first  
10 arrived?

11 A. I don't recall if he was outside or not,  
12 but he was -- he was there. He was present. Yes, sir.

13 Q. I know he was -- he -- he ended up in a  
14 police car at some point. Did you ever see him in the  
15 police car?

16 A. Not that I recall. No, sir.

17 Q. Okay. Did you ever talk to him that night?

18 A. Yes, sir.

19 Q. Okay. And that was at -- at the scene or  
20 later?

21 A. I don't recall if we talked to him at the  
22 scene first. We may have let him know that we were  
23 going to go to the Sheriff's Office. I don't remember  
24 having a lot of conversation with him prior to going to  
25 the Sheriff's Office.

16

1 Q. Okay. And what did you do there? And you  
 2 did go to the Sheriff's Office. Were you in that car  
 3 that drove him or in an accompanying car?

4 A. I don't recall how we were arranged, but,  
 5 yes, I -- we went with him to the Sheriff's Office in  
 6 some fashion.

7 Q. And I want to know what you did at the  
 8 scene before you went to the Sheriff's Office. Can you  
 9 tell me that as best of your memory?

10 A. I'm not sure exactly without reflecting on  
 11 some sort of report. I'm not sure where exactly I would  
 12 have walked, but we would have done a general  
 13 walkthrough of the house and -- and been told about  
 14 anything of importance at the time.

15 Q. Okay. So do you remember any of the things  
 16 you were told?

17 A. Just that there was -- obviously the nature  
 18 of -- of -- of Betsy Faria, which, I mean, that was  
 19 pretty plain. I could see that. And then that there  
 20 was some what appeared to be blood on a light switch,  
 21 and at that point, I mean, we didn't have much detail at  
 22 that point.

23 Q. Were officers going in and out of the  
 24 house?

25 A. I don't recall.

17

1 Q. You went in -- in the house, right?  
 2 A. I did. Yes, sir.  
 3 Q. Okay. And did you have a search warrant at  
 4 that point?

5 A. No, sir.

6 Q. Okay. What authority did you have to go  
 7 into the house at that point?

8 A. We had a -- a suspicious death. We didn't  
 9 -- we didn't know what was going on.

10 Q. Sure. You were there on an emergency  
 11 basis, right?

12 A. Yes, sir.

13 Q. Of course. You can go into the house under  
 14 those circumstances, right?

15 A. Sure.

16 Q. Okay. And you did, right?

17 A. Yes, sir.

18 Q. And was there talk that you would be  
 19 getting a search warrant maybe to -- for computers and  
 20 other things?

21 A. At that point, no, sir.

22 Q. Didn't hear that?

23 A. We wouldn't have -- no. I don't recall  
 24 that.

25 Q. Did you just sort of glance at the body or

18

1 did you have a chance to observe the body somewhat  
 2 closely?

3 A. Close as far as proximity? No. I didn't  
 4 -- I didn't get close to it. I mean, you could stand a  
 5 reasonable distance away and still survey it a little  
 6 bit.

7 Q. Did you do that?

8 A. Yeah. I -- I mean, I looked at her. Sure.

9 Q. Okay. Let me ask you some questions about  
 10 investigations. Do you agree that in any investigation  
 11 of a murder, time of death is an important fact to  
 12 determine?

13 A. I know that that's something that is  
 14 determined. I -- I haven't worked enough homicides to  
 15 tell you if it's, you know, one of the most important  
 16 facts out there. That's -- that would be one of the  
 17 facts that we determine, yes.

18 Q. Okay. Well, maybe we ought to talk a  
 19 little bit more about your training.

20 A. Okay.

21 Q. Have you gone to school and received any  
 22 certificates or had seminars, things like that, on -- on  
 23 investigating crimes?

24 A. Yes, sir.

25 Q. And have you done some -- did you do some  
 19

1 of those before December 2011?

2 A. Yes, sir.

3 Q. Were some of those on how to properly  
 4 conduct an investigation?

5 A. More than likely. Sure.

6 Q. Okay. Did you go to quite a few hours of  
 7 that sort of thing?

8 A. Prior to 2011, I'd -- I'd have to look at  
 9 my -- my certificates and everything of when I went to  
 10 which classes, because I have gone afterwards as well.

11 Q. Sure.

12 A. I just don't --

13 Q. I understand.

14 A. -- know when they -- when they were.

15 Q. You had been a detective for about four  
 16 years at that point, right?

17 A. Yes, sir.

18 Q. And had you -- had you worked with some  
 19 more experienced detectives in that period?

20 A. Yes, sir.

21 Q. Would you say that you had learned some of  
 22 the principles of the trade at that point both from  
 23 experience, from mentoring of more experienced people  
 24 and from schools?

25 A. Yes, sir.

20

1 Q. Okay. Did you think you were in a position  
 2 where you pretty well understood how to conduct an  
 3 investigation properly?

4 A. Sure.

5 Q. Okay. And that's why I was asking about  
 6 this time of death issue. So you would call it a --  
 7 something you would try to find out, but you didn't --  
 8 you're not sure whether you would call it one of the  
 9 most important things to find out, fair? Is that what I  
 10 -- did I understand what you said?

11 A. I mean, every -- every fact is important.  
 12 I mean, I wouldn't say that that's hands-down the most  
 13 important fact.

14 Q. Absolutely. Do you agree that in any  
 15 criminal investigation, that -- that one of your jobs is  
 16 to figure out which facts are more important than other  
 17 facts?

18 A. And again, I -- I think all the facts are  
 19 important, and it's my job to gather all the facts and  
 20 give them to the prosecuting attorney.

21 Q. Okay. Well, let's back up on that. So  
 22 there's some facts that -- let's say -- just take --  
 23 this house had a basement, right?

24 A. I believe so. Yes, sir.

25 Q. Okay. And there were some computers in the

21

1 basement, right?

2 A. If I remember correctly, yes. I believe  
 3 there was.

4 Q. Do you agree that the fact that there were  
 5 computers in the basement was an important fact in the  
 6 sense that there's a murder, we might have some data on  
 7 these computers that are relevant, the fact that they're  
 8 there is an important fact?

9 MR. PLEBAN: At -- at what point are we  
 10 talking about now? When he gets there?

11 MR. SCHOCK: Yeah. Yeah.

12 MR. PLEBAN: Later on or --

13 MR. SCHOCK: Yeah. Well, we're actually --  
 14 I'm asking in general terms now.

15 Q. (By Mr. Schock) Just about --

16 A. So --

17 Q. I'm talking about just --

18 A. -- not in relation to this case? Just in  
 19 general?

20 Q. Yeah. I'm kind of giving you a  
 21 hypothetical.

22 A. Okay. Hypothetically, I mean, if -- again,  
 23 it's case by case. I mean, if --

24 Q. Absolutely.

25 A. -- if there's electronics that are

22

1 available and it's used in the commission of a crime,  
 2 sure, it would be -- it would be a fact that we would --

3 Q. Yeah.

4 A. -- look into, sure.

5 Q. I guess what I'm trying to do is -- is just  
 6 -- you kind of seem to imply to me that all facts are  
 7 created equal, and I am trying to ask you whether in  
 8 fact in your job as an investigator, a detective, one of  
 9 the things you need to do is sift through all the facts  
 10 and determine which seem to be more important than  
 11 others?

12 A. I don't think it's our job to weigh the --  
 13 the levity of the importance of the facts. It's -- we  
 14 gather the facts. We're information gatherers. I think  
 15 the importance of -- of evidence or a fact would be an  
 16 opinion.

17 Q. So you're telling me that you don't form  
 18 opinions as you do your job?

19 A. We look for facts. We look for evidence.

20 Q. So were you on the Major Case Squad at the  
 21 time?

22 A. I believe so. Yes, sir.

23 Q. And we had a long deposition of Detective  
 24 McCarrick. Do you know him?

25 A. McCarrick? Yes, sir.

23

1 Q. And he was working with you at the time?

2 He worked for Lincoln County at the time?

3 A. Yes. I believe he did. Yes, sir.

4 Q. He's a colleague of yours, right?

5 A. Sure.

6 Q. Sure. And you have highest respect for  
 7 him?

8 A. Sure.

9 Q. Okay.

10 A. Yeah.

11 Q. You think he respected you?

12 A. Yeah. Absolutely.

13 Q. Now, he said that -- that there was one  
 14 gentleman above him who was the commander and then he  
 15 was sort of the second guy and he had a lot to do with  
 16 assigning out leads, telling people where to go over the  
 17 four days that the Major Case Squad was there, which he  
 18 called the call-out.

19 A. Okay.

20 Q. Do you remember that there were such  
 21 meetings?

22 A. Can you -- can you kind of drill that down?  
 23 Meetings like what?

24 Q. Sure. Sure. He said that two or three  
 25 times a day, the officers on the Major Case Squad who

24

1 were working on the case would assemble and discuss the  
 2 case and what had been learned and decide what they  
 3 would do next, things like that. Do you remember those  
 4 meetings?

5 A. Not with any specificity. It -- it -- we  
 6 would have had a -- a brief and a debrief, sure. I  
 7 mean, that would -- that seems to be more of a standard  
 8 practice --

9 Q. Right.

10 A. -- than any of it.

11 Q. Was that -- maybe I misunderstood Mr.  
 12 McCarrick, but I understood him to say that really all  
 13 the members of the team would get together in these  
 14 meetings to discuss the status of the investigation.

15 A. Yeah, and it -- it really depends on our  
 16 availability. I mean, we would try to assemble everyone  
 17 we could, sure.

18 Q. Sure. And was one of the ideas during  
 19 those meetings to try to determine how to allocate  
 20 resources and who would do what next, right?

21 A. That, I don't know, because I was never --  
 22 I was an investigator. I wasn't part of the -- the  
 23 hierarchy, the higher-ups of --

24 Q. But you were at the meetings, right, --

25 A. I can't say --

25

1 discussion, sure.

2 Q. And have opinions?

3 A. I -- I can't speak for what other people  
 4 would have said.

5 Q. Right. Did you express any opinions in the  
 6 course of those meetings?

7 A. I can't recall specifically what I said.

8 Q. That's not what I asked. Did you express  
 9 yourself on any opinions that you had about the  
 10 investigation in any of those meetings, if you remember,  
 11 not what you said yet, but did you do it?

12 A. I don't know.

13 Q. Okay. That's fine. And we're going to  
 14 have a deal, if we can, we made the same arrangement  
 15 with everybody else, sometimes when we're going through  
 16 one of these depositions, you don't remember something,  
 17 just as happened a moment ago, which is fine, but if you  
 18 do remember it between now and the trial of this case,  
 19 if -- would you be willing to let your attorney know so  
 20 that he can contact me and say, Oh, we have to update  
 21 this deposition?

22 A. Sure.

23 Q. That would be great. Otherwise, at trial,  
 24 if you start remembering things, I won't -- that'll --  
 25 I'll get surprised. That wouldn't be fair, --

27

1 Q. -- some of them anyway?

2 A. -- I was at ever -- every one, --

3 Q. I understand.

4 A. -- sure, in 2000 --

5 Q. You were at some of them?

6 A. Sure.

7 Q. And during those meetings, did it seem as  
 8 though there was a process of prioritizing facts that  
 9 needed to be gathered, So let's put some people on  
 10 looking at this and some people looking on that, and  
 11 we'll let this sit for a while, do that tomorrow, that  
 12 kind of thing? Was that what was done in those  
 13 meetings --

14 A. I --

15 Q. -- among other things?

16 A. I don't know. I mean, we shared  
 17 information. I don't know if they were prioritizing the  
 18 information or anything. That would -- again, that  
 19 would be something that's done by the I think they call  
 20 it the deputy commander or the report writer. I mean,  
 21 that would be done above my --

22 Q. Do you feel like all the people at your  
 23 level just sat quietly and waited for instructions as  
 24 opposed to participating in the discussion?

25 A. They would have participated in the

26

1 A. Okay.

2 Q. -- right?

3 A. Correct.

4 Q. Okay. So you were at some of these  
 5 meetings. We have established that. That's -- that's  
 6 all I really want to go to there.

7 So that night, you saw the body, right?

8 A. Yes, sir.

9 Q. And did you see the blood?

10 A. Yes, sir. Yes.

11 Q. Do you remember the condition of the blood?

12 Can you tell us what the condition of the blood was?

13 A. It would have been in various stages, wet,  
 14 dry. I mean, there -- there was a lot of it.

15 Q. Was some of it wet?

16 A. Appeared to be, sure.

17 Q. Some of it -- now, do you agree that blood  
 18 sort of sets up, it coagulates? I mean, water, for  
 19 example, if you spill some water, it doesn't glob up.

20 It just sort of dissipates. And blood acts a little  
 21 differently than water. Do you agree with that?

22 A. Sure. Blood does act differently than  
 23 water.

24 Q. Okay.

25 A. Right.

28

1 Q. But -- but some of this -- you're saying  
2 some of the blood was wet?

3 A. Appeared to be, yes, sir.

4 Q. How about the rug around where the --  
5 wasn't there some blood on the rug near the body?

6 A. I don't recall there being a rug. I -- I  
7 remember carpet. I don't remember a rug.

8 Q. Carpet. That's what I'm talking about.

9 A. Oh, okay. Yeah. There would have been  
10 blood on the carpet. Sure.

11 Q. Do you remember the condition of that  
12 blood?

13 A. Not specifically. No.

14 Q. Okay. When you looked at that body, did  
15 you reach any sort of immediate conclusions about how  
16 the crime might have occurred?

17 A. Other than she was stabbed? I mean, that  
18 was pretty obvious, that she was stabbed.

19 Q. She had a knife sticking out of her neck,  
20 right?

21 A. Yes.

22 Q. No question on that one.

23 A. Right. Right.

24 Q. And she had this awful, deep cut on her  
25 arm, right?

29

1 A. Yeah. I mean, I can't remember which arm  
2 it was, but, yeah, she would have had what appeared to  
3 be a gash in her arm.

4 Q. Did you reach any conclusions as to whether  
5 that was a defensive wound or not?

6 A. Not that I recall. Again, that -- that may  
7 be reflected in -- in a report or something. The --  
8 overall, I mean, it looked like there was a struggle.

9 Q. You felt there were signs of a struggle?

10 A. Sure.

11 Q. Tell me what those signs were.

12 A. The amount of blood, just -- just hers. I  
13 mean, just her there, it looked like -- that's not  
14 something that somebody would do to themselves.

15 Q. Right. When you get to stab wound whatever  
16 it is, eight and nine, you're -- pretty hard to go the  
17 next 40, right?

18 A. Well, yeah. I mean -- yeah. I don't -- I  
19 don't see -- I don't see how somebody could just lay  
20 there and be stabbed that many times and there not be a  
21 struggle.

22 Q. Right. Okay. Fair enough. And, of  
23 course, you didn't know how many times she had been  
24 stabbed at that point?

25 A. At that point, no, sir.

30

1 Q. And her face was covered in blood and  
2 everything, right?

3 A. Yeah. Yes.

4 Q. I mean, it was pretty -- pretty awful,  
5 wasn't it?

6 A. Oh, yeah. Absolutely.

7 Q. Now, I don't mean to be macabre about this,  
8 but your job sometimes involves seeing victims of crime  
9 in that sort of condition, fair enough?

10 A. And worse, yes, sir.

11 Q. And worse. Okay.

12 THE WITNESS: Thank you.

13 Q. (By Mr. Schock) Did you go to any other  
14 parts of the house?

15 A. From what I remember, I just walked down  
16 the hallway to the bedroom and -- and looked into the  
17 bedroom real quick and kind of did a quick survey, and  
18 then that was it. I don't -- I don't remember walking  
19 any other places in the house.

20 Q. Was your survey for the purpose of clearing  
21 the residence or for just looking around for evidence?

22 A. My understanding is that it was already  
23 cleared, so I would have -- I would have just been given  
24 the call it the highlights, I mean given kind of a brief  
25 overview of what the deputy had or sergeant for that

31

1 matter.

2 Q. Explain that, please.

3 A. The -- the deputy, the original responding  
4 deputy --

5 Q. Right.

6 A. -- in clearing the house may have some  
7 further information that I may need. So if I remember  
8 correctly, he was saying, Hey, look in this place, look  
9 in this place, this is what I saw, and then that would  
10 have been it.

11 Q. Did he talk, for example, about the blood  
12 on the light switch?

13 A. The light switch, something to that effect.  
14 Yes.

15 Q. You looked at that?

16 A. Yeah.

17 Q. I mean, you were there in your capacity as  
18 a detective? You were trying to gather information,  
19 right?

20 A. Yes.

21 Q. That's why you walked around?

22 A. Yeah.

23 Q. Okay. What was the -- well, did you go  
24 into the kitchen?

25 A. I can't remember if I did or not.

32

1 Q. Did you look in the kitchen?  
 2 A. We would have been able to see the kitchen  
 3 from the foyer, at least part of it, not the whole  
 4 thing.  
 5 Q. Do you remember the condition of the floor?  
 6 A. In the kitchen?  
 7 Q. Correct.  
 8 A. No. I do not.  
 9 Q. Was it dirty?  
 10 A. I -- I don't recall.  
 11 Q. No recall. Did you see any evidence of  
 12 wiping motion on the floor or anything?  
 13 A. I don't recall.  
 14 Q. You don't remember or you didn't see  
 15 anything, and I'm not trying to -- I just want to  
 16 clarify the record.  
 17 A. I -- I don't know if there was or not.  
 18 Q. As you sit here now?  
 19 A. At that -- at the initial -- the onset,  
 20 when I was there the first time?  
 21 Q. Yes.  
 22 A. I don't remember seeing anything.  
 23 Q. Do you agree that in your capacity as a  
 24 detective, that would have been something you would have  
 25 been looking for anywhere in the house, sign of a

33

1 A. I believe so. Yes, sir.  
 2 Q. When you say, for example, walked around,  
 3 you walked to the bedroom, you said?  
 4 A. Yes.  
 5 Q. Did you watch your steps to -- less there  
 6 be a pile of blood, then you would not step in that;  
 7 fair enough?  
 8 A. Fair enough.  
 9 Q. I mean, you watch yourself? You didn't  
 10 want to disturb anything, right?  
 11 A. Correct.  
 12 Q. Okay. Do -- when we're talking about -- as  
 13 you looked in the house, in the kitchen area and you  
 14 looked toward this back door, did you see any signs of  
 15 cleanup or a path marked with wiping motions or anything  
 16 like that?  
 17 A. I don't -- I really don't recall.  
 18 Q. Okay. Do you agree that a prudent  
 19 detective under those circumstances would be looking for  
 20 such a sign?  
 21 A. Again, at that point, not necessarily.  
 22 Q. Would you be -- would it be a statement  
 23 that you would just be looking for anything that might  
 24 stand out as unusual? Would that be your consistent --  
 25 A. Anything, but not everything, sure.

35

1 cleanup?  
 2 A. At that point?  
 3 Q. Yes.  
 4 A. Not necessarily.  
 5 Q. Well, you knew you had a dead body, right?  
 6 A. Yes.  
 7 Q. Wouldn't sign of a cleanup be relevant?  
 8 A. On the initial response? Not necessarily.  
 9 I'm -- I'm gathering preliminary information at that  
 10 point, and the least I can disturb a crime scene,  
 11 sobeit.  
 12 Q. Well, looking at something doesn't disturb  
 13 it unless it's the Heisenberg uncertainty principle,  
 14 right, which we don't have to get into too deeply?  
 15 A. If I have to walk through the scene to get  
 16 there, there's an opportunity for disturbance.  
 17 Q. Sure. But didn't you say the kitchen was  
 18 visible?  
 19 A. Part -- parts of it, sure.  
 20 Q. Okay. Did you look closely at the kitchen?  
 21 A. I don't recall if I did or not.  
 22 Q. Okay.  
 23 A. I --  
 24 Q. And there's kind of a -- a doorway out to  
 25 the back porch, right?

34

1 Q. Anything, but not everything. Okay.  
 2 A. Correct.  
 3 Q. So if a guy had a -- had a big Statue of  
 4 Liberty in the corner, that might be kind of  
 5 interesting, but not very important, fair enough?  
 6 A. Sure.  
 7 Q. All right. So you're trying to figure out  
 8 what would be relevant to the crime, right?  
 9 A. Again, anything, but not everything.  
 10 Q. That's a human process? Would you call it  
 11 a sub -- would you agree it's kind of a subjective  
 12 process, to -- to use your mind and evaluate what you're  
 13 seeing and determine what's important and what isn't  
 14 important?  
 15 A. I don't -- I don't think it's -- it's  
 16 subjective to say that I have to gather every single  
 17 important fact at that point. I have what are facts. I  
 18 mean, they're -- they're facts. There -- there was a  
 19 red substance on the light switch, she was there with a  
 20 knife in her neck. Those were the facts that I had. I  
 21 mean, I -- I don't think it's fair to say that I should  
 22 have gathered every single pertinent fact at that point  
 23 in time. I mean, that -- that would have been hasty in  
 24 my opinion.  
 25 Q. Of course. And also impossible, right?

36

2014

1 A. Correct.  
 2 Q. What I'm trying to ask you is -- we've --  
 3 we've covered enough. We'll -- we'll go on.  
 4 A. Okay.  
 5 Q. So you walked around the house a little  
 6 bit. We have discussed that, right?  
 7 A. Correct.  
 8 Q. Do you remember anything else that you saw  
 9 that was a pertinent fact?  
 10 A. I -- I don't recall at this point. No.  
 11 Q. Okay. And, again, if you remember  
 12 something, you will let your lawyer know, right?  
 13 A. Correct.  
 14 Q. Okay.

15 MR. RETTER: Even during the course of the  
 16 deposition.

17 MR. SCHOCK: That would be great.  
 18 MR. RETTER: Absolutely.  
 19 MR. SCHOCK: We'll come back to it.  
 20 Q. (By Mr. Schock) What did you do after you  
 21 walked around?  
 22 A. I -- I probably would have -- I don't know.  
 23 I don't remember exactly what I did minute by minute. I  
 24 just -- we would have -- at some point, I know we took  
 25 Russ back to the police station and talked to him.

37

1 Q. Okay. How did it come about that you were  
 2 one of the officers involved in that process?  
 3 A. Which process? Of taking him back?  
 4 Q. Taking him back. Yes.  
 5 A. We would have -- there would have been me  
 6 and another detective, it was Detective Harney, and we  
 7 were the only two detectives on scene, so we -- just  
 8 naturally, we would have taken him back.  
 9 Q. Did you get an order to do that from  
 10 anybody who was a -- a superior of yours?

11 A. I don't recall.

12 Q. Did you have -- as part of your job, did  
 13 you feel the authority to say to Mr. Faria, Hey, we're  
 14 going to go to the station, sir, are you willing to go  
 15 with us, that kind of thing?

16 A. Sure.

17 Q. That's in your purview?

18 A. Yeah. I would have -- right. I would have  
 19 gathered information from Mr. Faria. Sure.

20 Q. That's routine, right?

21 A. Sure.

22 Q. Would you agree with the statement that in  
 23 every homicide, the spouse is a suspect?

24 A. A suspect? No.

25 Q. Would you agree that in every homicide,

38

1 that the spouse should be considered as a possible  
 2 person who committed -- well, if we -- for example, if  
 3 the spouse is in Europe and we absolutely know that and  
 4 the homicide happens in Troy, that spouse is probably  
 5 not a suspect, right?

6 A. Yeah, but we would -- I mean, yeah. We  
 7 would find that out. Sure.

8 Q. Sure. But now in this case, you had Mr.  
 9 Faria as the person who was the reporting party and the  
 10 spouse, right?

11 A. Yes. Yes, sir.

12 Q. Did that make him immediately in your mind  
 13 a suspect?

14 A. No, sir.

15 Q. Okay. And did you take him to the station  
 16 to develop information to see if he would be a suspect?

17 A. I don't think we set out to see if he was a  
 18 suspect. We set out to see if he had any -- any  
 19 information relevant to his -- his wife's homicide.

20 Q. Okay. Fair enough. At that point, you  
 21 knew almost nothing except that there had been the  
 22 report of the death and you were there and saw a body,  
 23 right?

24 A. Correct.

25 Q. And did anybody say anything about the fact  
 39

1 that Mr. Faria had called it in as a suicide?

2 A. I believe that was mentioned. Yes, sir.

3 Q. And as you looked at the body, as we have  
 4 already spoken about, you knew it wasn't a suicide,  
 5 right?

6 A. I wouldn't have known that for a fact. I  
 7 -- it didn't appear to be one, no, sir.

8 Q. We -- we talked earlier about it?

9 A. Correct.

10 Q. I mean, it -- so did that make you a little  
 11 suspicious about Mr. Faria?

12 A. I wouldn't say it made me suspicious.

13 Again -- again, we gather facts. So one of my  
 14 fact-gathering missions would have been to talk to Mr.  
 15 Faria and, you know, understand -- I mean, Betsy is not  
 16 there to tell us what her -- her family dynamic is or  
 17 anything, and he would have been the next closest  
 18 person, so we would have talked to Mr. Faria.

19 Q. Okay. When you were looking at that body,  
 20 did you reach any -- did -- did you observe any facts  
 21 that would have led you to know how long the body had  
 22 been in the state of death as opposed to life?

23 A. At that point, I don't -- I don't believe I  
 24 did.

25 Q. Okay. And we have said this is about an --

40

2015

1 we -- we think 10:30 maybe, an hour after the call --  
 2 A. I don't -- I don't recall the exact --  
 3 Q. Okay.  
 4 A. It -- it -- I would assume it would be  
 5 within an hour, and here's why, we have an hour to  
 6 respond to a scene.  
 7 Q. Oh, --  
 8 A. So --  
 9 Q. -- okay. okay. So you -- the call at --  
 10 911 call came in, and at some point pretty soon  
 11 thereafter, you got a call to respond and you did?  
 12 A. Sure.  
 13 Q. Okay.  
 14 A. Yes.  
 15 Q. How long after you arrived -- how much time  
 16 passed until you had a chance to observe the body?  
 17 A. I don't know.  
 18 Q. I mean, was that one of the first things  
 19 you did or --  
 20 A. I -- I don't know. I don't know the order  
 21 in which things --  
 22 Q. Okay.  
 23 A. -- transpired.  
 24 Q. Did you direct anybody else to do anything,  
 25 gather any facts?

41

1 A. Not that I'm aware of. No, sir.  
 2 Q. Okay. You went to the station. You don't  
 3 remember whether you were in the car with Mr. Faria or  
 4 in a different car?  
 5 A. Specifically, no. Chances are I was in the  
 6 -- in a car with him.  
 7 Q. Okay. Remember anything that was said in  
 8 the car?  
 9 A. Not specifically. No, sir.  
 10 Q. Did he seem shaken?  
 11 A. Not that I recall. I don't know.  
 12 Q. Don't know. Fair enough.  
 13 A. No.  
 14 Q. What happened when you got to the station?  
 15 And was this the -- is this the Lincoln County Sheriff's  
 16 Department?  
 17 A. Yes, sir. Again, I -- I -- I would have to  
 18 look at my report. Chances are we took him to an  
 19 interview room and -- and either began talking to him or  
 20 -- I don't -- I don't know specifically what we did, you  
 21 know, in chronological order, but we would have gone  
 22 into an interview room and talked or gotten him a drink  
 23 or, you know, something to that effect.  
 24 Q. Sure. If he said he wanted a cigarette,  
 25 you got him a cigarette, right?

42

1 A. More than likely, sure.  
 2 Q. In fact, I was kind of curious about that.  
 3 Did -- you did get him a cigarette, right? I mean, your  
 4 report says you did?  
 5 A. Okay. If my report says I did, --  
 6 Q. Was it --  
 7 A. -- I probably did.  
 8 Q. Was it -- was it considered within the  
 9 rules to smoke in the Sheriff's Office?  
 10 A. We would let people, considering the  
 11 circumstances. We have let people, you know.  
 12 Q. Would you call that no big deal?  
 13 A. Yeah. That's --  
 14 Q. A guy wants a cig, let him have a cig? His  
 15 wife just --  
 16 A. Yeah. I mean --  
 17 Q. -- died, right?  
 18 A. Yeah. That's --  
 19 Q. Okay. Fair enough.  
 20 THE PLAINTIFF: Can we take a quick break,  
 21 Bevis? I got to go to the bathroom real quick.  
 22 MR. SCHOCK: Okay. Let's go off the  
 23 record.  
 24 (Break was taken.)  
 25 Q. (By Mr. Schock) Okay. Let's go back on

43

1 the record. I am going to ask two follow-up questions.  
 2 When you got to the scene, do you know if fire and  
 3 rescue and/or ambulances had -- were there? Do you  
 4 remember that?  
 5 A. I don't -- I don't remember if --  
 6 Q. Do you know if they -- do you have  
 7 knowledge now as you sit here now whether they had come  
 8 and gone?  
 9 A. I don't know who had -- who had come and  
 10 gone at that point.  
 11 Q. When you got to the scene, was there a  
 12 person who was in charge of the scene?  
 13 A. Not that I recall specifically. I think  
 14 Deputy Hollingsworth was keeping the crime scene log.  
 15 We have an entry/exit/ingress/egress log, so they would  
 16 have -- they would have tracked that.  
 17 Q. You remember somebody who was saying, I'm  
 18 in charge here?  
 19 A. No. I don't -- I don't recall anybody  
 20 saying that.  
 21 Q. All right. Let's go back to this interview  
 22 of Mr. Faria.  
 23 A. Okay.  
 24 Q. He told you a story of where he had been  
 25 that day and that evening, correct?

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2016

1 A. Correct.

2 Q. And you then had something that you could  
3 check on, fair?

4 A. Fair.

5 Q. And we'll put maybe those into two broad  
6 categories. One is things that could be checked on with  
7 surveillance cameras like going to QT and things that  
8 had to be checked on via human beings.

9 A. Okay.

10 Q. True?

11 A. Sure.

12 Q. And I want to ask you, did you do anything  
13 to initiate the checking up on either of those two sets  
14 of data points?15 A. If you consider asking for assistance  
16 through Major Case Squad checking up on that, --

17 Q. I sure do.

18 A. -- sure.

19 Q. So talk -- so let's go back to Major Case  
20 Squad. When did you find out that Major Case Squad was  
21 on call-out?22 A. I -- it -- it would have been within the  
23 parameters. It would have been within four hours. I  
24 mean, they would have -- they would have been working on  
25 resources within those four hours.

45

1 Q. Well, you were with Mr. Faria is what I'm  
2 kind of getting at?

3 A. Mm-hm.

4 Q. Did you -- were you coming out once in a  
5 while and talking to other people in the law enforcement  
6 where somebody said, Hey, Major Case Squad is coming;  
7 Oh, okay; and that kind of a thing or --8 A. Yeah. I knew they were coming and we would  
9 have been preparing. There's things we got to get out  
10 and set up and make --

11 Q. Yeah.

12 A. -- available to them and stuff like that,  
13 sure.14 Q. Well, Mr. Harney talked about that  
15 yesterday. Was -- wasn't -- didn't he do some of the  
16 setup in the room and everything?17 A. Yeah. Yeah. He -- he handled some of that  
18 and I handled some of that. Sure.

19 Q. Okay. Routine?

20 A. Yeah.

21 Q. So how did it come about that the  
22 information that Mr. Faria said he had been certain  
23 places like the QT and the U-Gas was communicated to  
24 Major Case Squad? Did you have any function in that?

25 A. I don't recall if I did or not.

46

1 Q. Okay. You are aware that that information  
2 was communicated to them?

3 A. It would have been. Sure.

4 Q. You just don't -- but you were the one that  
5 got that information with Mr. Harney, right?6 A. I wouldn't say I was the only person that  
7 got that information.

8 Q. Who was --

9 A. I don't -- I don't know if another team of  
10 detectives got that information or not. I didn't see  
11 their interview.

12 Q. Who was with you interviewing Mr. Faria?

13 A. I don't believe anybody was with me. I  
14 think it would have just been me and Mr. Faria.15 Q. There was a glass and people could observe,  
16 right?17 A. Not necessarily. There -- it's a -- it's a  
18 four-walled room, but there's cameras, so you can  
19 observe from a I'll call it a satellite room.

20 Q. I understand.

21 A. Okay.

22 Q. Did -- you gathered this information that  
23 he -- he said he had been various places that evening?

24 A. Yes.

25 Q. And then somehow that was communicated to

47

1 the Major Case Squad. Did you recommend or do you know  
2 if someone recommended that, Hey, we ought to go get  
3 this surveillance camera information and see if he's  
4 telling the truth?5 A. I -- I don't know if it was or not. They  
6 came upon the information, I just don't remember how,  
7 and they would have taken the steps to validate it, I'm  
8 sure.9 Q. And as you sit here now, you know that that  
10 happened?

11 A. Yeah. I know that happened. Yeah.

12 Q. Okay. And you also know it checked out,  
13 right, within -- pretty close? He had one thing  
14 backwards, right, --

15 A. I -- I think so.

16 Q. -- that day?

17 A. I -- I don't -- I don't remember exactly.

18 Q. But -- but his story of where he went as  
19 far as being on camera was correct, right?

20 A. I believe so.

21 Q. In other words, this Arby's bag in his car,  
22 right?

23 A. If I remember correctly, sure.

24 Q. Okay. And that -- and it was determined  
25 that in fact he was at Arby's, right?

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12

2017

1 A. To the best of my knowledge. I --

2 Q. Right.

3 A. Like I said, these weren't my leads, so I  
4 don't -- I don't know.5 Q. Well, you gathered -- you were the first  
6 one to gather the information that he had been to those  
7 places because he told you so, right?

8 A. Correct.

9 Q. And then what you're telling me is you  
10 didn't go get --

11 A. No. I didn't follow up.

12 Q. -- the infor --

13 A. Like I didn't go to Arby's or -- what was  
14 the other place you said?

15 Q. U-Gas, et cetera.

16 A. Yeah. I didn't -- I didn't go to those  
17 places.

18 Q. I understand.

19 A. Okay.

20 Q. But you know -- I mean, you were involved  
21 in this investigation for years going forward, right?22 A. Not necessarily. More -- I mean, I would  
23 have had some duties in the initial part of it, but I  
24 wasn't really as immersed in it as I am now until prior  
25 to the second trial.

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1 is coming to take over the investigation, I -- I might  
2 not have wanted to, you know, talk to him as in detail  
3 as the Major Case Squad would when they got there. They  
4 essentially take over the investigation, so --

5 Q. And --

6 A. -- it's their decision if I stay in the  
7 interview or not, and -- and at -- when they got there,  
8 I didn't. I didn't stay in the interview.

9 Q. Who took over the interviewing for you?

10 A. There was -- there would have been two  
11 detectives. I only know that Ray Floyd took it over,  
12 him and somebody else. I don't know who the other  
13 person was.14 Q. All right. Somehow the Major Case Squad  
15 learned that there were four people he had been with,  
16 right?

17 A. I believe it was four. Yes, sir.

18 Q. Okay. And somehow their names were  
19 communicated to Major Case Squad, fair enough?20 A. Yeah. Yeah, or either they got them. I  
21 mean --22 Q. And as you sit here now, you're aware that  
23 those people were interviewed very early the next  
24 morning, 6:00 or 7:00, on the 28th, correct?

25 A. That's -- that sounds right. I know they

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1 Q. I understand. Okay. Now, let's go to this  
2 second set of information, which is the part that had to  
3 be verified by talking to people, and those --

4 A. Okay.

5 Q. -- would be the people who -- that he had  
6 been at this game night with, right?

7 A. Sure. Yes.

8 Q. And he told you that he got together with  
9 his pals on Tuesday nights and they played a board game,  
10 right? You knew that from talking to him?

11 A. Yeah. I believe that's what he said.

12 Q. Okay. And so did -- do you remember that  
13 you got their names?14 A. I -- I don't remember if I did. I mean, if  
15 I did, I did.

16 Q. Okay. Well, I mean --

17 A. I don't remember if I asked specifically  
18 who they were or anything.19 Q. Well, surely if -- if you're talking to a  
20 guy whose wife just got murdered and he said during the  
21 relevant time, I was with certain people, you would have  
22 asked their names, wouldn't you have?

23 A. Potentially, sure.

24 Q. Just potentially?

25 A. Yeah. No. I mean, knowing that Major Case

1 were interviewed. I'm not sure what time they were  
2 interviewed.3 Q. Well, they were interviewed twice, right,  
4 then and a couple days later?5 A. I'm not sure that all of them were. I -- I  
6 think there was a follow-up interview done. I'm not --  
7 I'm not sure. I -- like I said, I -- I didn't have any  
8 involvement with that.9 Q. Okay. So at some point, you left Mr. Faria  
10 and other people took over talking to him?

11 A. Yes.

12 Q. Okay. What was your next act that you  
13 undertook in connection with this case?14 A. I -- I don't recall what order they were  
15 in. There would be a lead sheet to say what I did next.  
16 I -- I don't know exactly what --

17 Q. Can you tell me some of the things you did?

18 A. I believe I did I don't remember if it was  
19 a search warrant for the phone itself or if it was for  
20 electronic records from the service provider. It was  
21 one of the two. I would -- I think I got call history  
22 from the residence, then after that, I'm -- I would have  
23 done the search warrant for the BLUESTAR.24 Q. Yeah. We're going to get to that in a  
25 minute.

52

2018

1 A. Okay.  
 2 Q. That's a few days later.  
 3 A. Yeah. Initially, I'm not sure exactly what  
 4 all I did. I had a few tasks. I think I had four or  
 5 five leads, not very many at all.  
 6 Q. Do you think one of them might have related  
 7 to getting call history and all that, maybe --  
 8 A. Yeah.  
 9 Q. -- cell phone records or cell phone tower  
 10 history?  
 11 A. Yeah. Well, I don't -- that's the thing.  
 12 I don't remember what it was, if it was -- so we would  
 13 do a search warrant for what's physically on the phone  
 14 and then we would do a 2703 for the service provider  
 15 records. I don't know which one I did.  
 16 Q. Okay. That's fair enough.  
 17 A. Yeah.  
 18 Q. Were you in communication with other  
 19 officers, the Maj -- this Major Case Squad, sort of  
 20 talking through this process of gathering information,  
 21 Oh, now we have information from his phone, now we've  
 22 got the cell tower records? You knew as the -- did you  
 23 know in your role in this case what was going on in the  
 24 investigation?  
 25 A. I -- I had a part in it. I mean, I'm sure

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1 I knew bits and pieces of it. I didn't have everything  
 2 at my fingertips. Oh, I did the autopsy, too. I went  
 3 to the au -- I didn't do the autopsy. I went to the  
 4 autopsy. I attended it.  
 5 Q. Okay. So were you aware or did you have  
 6 any involvement in Mr. -- were you aware of or did you  
 7 have any involvement in Mr. Faria going to a polygraph  
 8 exam in Lake Saint Louis?  
 9 A. I didn't know that occurred at the time. I  
 10 didn't know that was occurring until after the fact.  
 11 Q. Okay. Did you suggest it or anything like  
 12 that?  
 13 A. No.  
 14 Q. Nothing to do with it?  
 15 A. No.  
 16 Q. As you sit here now, do you have any  
 17 knowledge of where the raw data from that polygraph is?  
 18 A. No.  
 19 Q. Have you ever heard any talk about where it  
 20 might be?  
 21 A. No.  
 22 Q. Have you ever heard any talk that it's  
 23 never been produced to the defense counsel at criminal  
 24 or to plaintiff's counsel in this case?  
 25 A. No, sir.

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1 Q. Mr. McCarrick told us that he spoke to the  
 2 poly examiner and that Mr. Faria had flunked the poly.  
 3 A. Okay.  
 4 Q. Did you become aware of that on the 28th,  
 5 that day?  
 6 A. Not that I recall. No, sir.  
 7 Q. Were you still devoting all your time to  
 8 this case?  
 9 A. I would assume so. Sure. I mean, we would  
 10 be assigned to it until the Major Case Squad they call  
 11 it disbanded, they left, and then we'd go back to our  
 12 normal -- normal duties.  
 13 Q. That was on -- according to Mr. McCarrick,  
 14 that happened on the 31st, about -- it was about a  
 15 four-day call-out. Does that sound right?  
 16 A. Yeah. They're usually four or five days.  
 17 Q. And I can't remember if I asked you this.  
 18 Were you technically a member formally of the Major Case  
 19 Squad at that time?  
 20 A. I believe I was.  
 21 Q. Okay.  
 22 A. I'm -- I'm not entirely sure. There's -- I  
 23 mean, we fill out applications for them, but I may not  
 24 have been a member of the Major Case Squad, but I was a  
 25 member of the host agency, so the host agency always

55

1 helps out and the Major Case supplements it and --  
 2 Q. I understand.  
 3 A. -- coordinates the investigation.  
 4 Q. You've been on the Major Case Squad at  
 5 various times in your career; --  
 6 A. Yes.  
 7 Q. -- is that true?  
 8 A. Yeah, in different capacities.  
 9 Q. So Mr. McCarrick told us that when he spoke  
 10 to the poly examiner, he said, I concluded that Mr.  
 11 Faria was our guy.  
 12 I think that's a pretty -- pretty accurate quote  
 13 to what he said in his deposition a couple days ago.  
 14 A. Okay.  
 15 Q. Did you get the information that Mr. Faria  
 16 was the prime suspect at any time that day, the 28th,  
 17 the day after the murder?  
 18 A. I don't -- I don't think it was ever  
 19 delivered that he was a prime suspect. I think he was  
 20 the -- the suspect that we had at the time.  
 21 Q. Okay. Did you ever have on that very first  
 22 day a -- any information that there were any other  
 23 suspects?  
 24 A. No.  
 25 Q. Anything about Pam Hupp being a suspect?

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2019

1 A. No.  
 2 Q. Did you have anything to do with  
 3 interviewing Pam Hupp that day?  
 4 A. No.  
 5 Q. I know you talked to her in 2014 or '15,  
 6 right?  
 7 A. '15. '15, I think it was.  
 8 Q. 2015?  
 9 A. Yeah. Yeah. Much later on. Yeah.  
 10 Q. Had you ever talked to her before then?  
 11 A. Before 2015?  
 12 Q. Correct.  
 13 A. Not that I'm aware of.  
 14 Q. See, we covered whole sections of the  
 15 deposition in one question.  
 16 A. Whatever works for you.  
 17 Q. When did you become aware that Mr. Faria  
 18 was being taken as the person who had murdered his wife  
 19 by law enforcement?  
 20 A. I -- I don't know. I -- I mean, it would  
 21 have been within those few days, but I don't remember  
 22 when it was.  
 23 Q. Do you remember anything about Mr. Faria  
 24 being released on the 29th? Were you -- did you have  
 25 any involvement in that?

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1 Askey saying to people in the host agency and the Major  
 2 Case Squad that she did not have enough information to  
 3 charge Mr. Faria?  
 4 A. Firsthand, no. That was something that was  
 5 relayed to us -- relayed, and not just to me, it wasn't  
 6 one-on-one, but relayed to us by McCarrick. It would  
 7 have been McCarrick.  
 8 Q. Was that in one of those meetings or  
 9 something when he told you all that?  
 10 A. It -- it may have been. Sure. I mean,  
 11 that -- I remember that's -- that's where it came from.  
 12 Q. That was kind of the purpose of those  
 13 meetings, was to update people on major information?  
 14 That would be major information, fair enough?  
 15 A. Yeah, to collaborate a little bit.  
 16 Q. Yeah. Sure.  
 17 A. Been a while.  
 18 Q. Of course. And then was there -- she  
 19 actually was on TV, right? Did you know about that?  
 20 A. Who's that?  
 21 Q. Miss Askey.  
 22 A. No. I'm not aware of that.  
 23 Q. Aware of a -- a news article about it  
 24 indicating that she hoped to have information to charge  
 25 somebody? Anything about that did you know?

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1 A. More than likely, No. I don't -- I don't  
 2 think I did. No.  
 3 Q. Did you have any knowledge of the  
 4 communications between law enforcement, Sheriff's  
 5 Department employees, which you call I guess the host  
 6 agency? Was that the term you used?  
 7 A. Okay. Yeah. Yeah. We would -- we would  
 8 have been the host agency. Sure.  
 9 Q. And Major Case Squad with the prosecuting  
 10 attorney's office?  
 11 A. No. I mean, for lack of better words, I  
 12 was a grunt, so --  
 13 Q. Okay. Did you have yourself any  
 14 communication with Miss Askey during say the time of the  
 15 call-out, yourself?  
 16 A. No.  
 17 Q. Are you aware of who spoke to her during  
 18 that time period?  
 19 A. No.  
 20 Q. Okay. You don't remember or you -- and you  
 21 might have known at one time, or you just don't know and  
 22 you never did know?  
 23 A. No. No. I didn't know and I still don't  
 24 know.  
 25 Q. Okay. Do you remember anything about Miss

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1 A. No.  
 2 Q. So then we get the -- okay. Let me ask you  
 3 one more question.  
 4 A. Okay.  
 5 Q. Do you remember anything else specifically  
 6 that you did regarding the Faria case, the Faria murder,  
 7 during the call-out?  
 8 A. If I'm missing something, it's on a lead.  
 9 I mean, just like with the autopsy, that clicked a  
 10 little bit later, so -  
 11 Q. Okay. Call-out ended on the 31st. People  
 12 mostly just took the weekend off, right, the holiday?  
 13 A. Yeah. Sure. That would seem -- seems  
 14 correct.  
 15 Q. And then -- then there was some discussion  
 16 of doing a BLUESTAR test. Do you remember that?  
 17 A. I don't remember -- I didn't have that  
 18 discussion. If it -- it was had, it was had by other  
 19 people.  
 20 Q. Well, did you participate in a BLUESTAR  
 21 test?  
 22 A. I would have performed it. Sure.  
 23 Q. Okay.  
 24 A. Yeah.  
 25 Q. What were the events that precipitated your

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2020

1 being the person who performed it? How did it come  
 2 about that you were the guy that did that?  
 3 A. So I wasn't the one that obtained the  
 4 search warrant, but a search warrant was being obtained,  
 5 and I was told that that was one of the things that we  
 6 would need to do, and that's part of my -- excuse me --  
 7 part of my background, so --

8 Q. Okay.

9 A. Again, You're -- you're the grunt, go do  
 10 your job, that sort of thing.

11 Q. Did you have prior training in how to do a  
 12 BLUESTAR test?

13 A. Yes.

14 Q. And had you had -- you have some -- some  
 15 kind of certificate or something on how to do that?

16 A. I took -- so my -- my associate's in  
 17 criminal justice has an emphasis on forensic science, so  
 18 the prac -- I remember the practical in college, right,  
 19 so we covered a classroom full of pig blood, just  
 20 covered it, had it all cleaned up professionally, and  
 21 went back and BLUESTARRED. Well, it would have been  
 22 Luminal at the time, but did the chemical luminescence  
 23 test, so --

24 Q. And was --

25 A. I've had training in -- in -- what do they

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1 Q. When you were learning about BLUESTAR and  
 2 Luminal, --

3 A. Yes.

4 Q. -- did you understand that just because  
 5 there was illumination, that didn't mean that there was  
 6 blood?

7 A. Correct.

8 Q. It could be from something else?

9 A. Correct.

10 Q. And so would it be a fair statement that a  
 11 positive was not firm evidence of blood, but it was an  
 12 evidence -- evidence only that something had reacted  
 13 which was on the list of things that would react and it  
 14 could be blood?

15 A. Could be. Yeah. It could be blood. One  
 16 of the things it could be. Sure.

17 Q. If there was no reaction, then there was no  
 18 blood, right?

19 A. Yeah. That's fair to say.

20 Q. Okay. When you did the academic version  
 21 when you were in class and you put the pig -- pig blood  
 22 around the room, then you cleaned it up, and then you  
 23 did the BLUESTAR or the Luminal, whichever it was, did  
 24 -- did it illuminate?

25 A. In -- in -- at school?

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1 call it -- like controlled experiments, so, yeah.

2 Q. When you did the academic version, you got  
 3 the pig blood, cleaned it up, and then used BLUESTAR,  
 4 did -- did the blood show?

5 A. Yeah.

6 MR. RETTER: Used Luminal, to be clear, was  
 7 his testimony, if it matters.

8 THE WITNESS: Yeah. That would have been  
 9 Luminal.

10 Q. (By Mr. Schock) Okay. And this test in  
 11 the Faria house was not Luminal. What --

12 A. It would have been BLUESTAR.

13 Q. Is it --

14 A. Just another reagent.

15 Q. Is there any material difference in the  
 16 two?

17 A. It's the same product, just compet --  
 18 competing products. That's all it is.

19 Q. Yeah. Same -- works in the same manner?

20 A. Yeah. Sure.

21 Q. When you were learning about BLUESTAR --  
 22 this was BLUESTAR, right? This was --

23 A. Which time?

24 Q. The -- the Faria case.

25 A. Yes.

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1 Q. Yes.

2 A. In my college?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. So is it a fair statement then that  
 6 the power of this Luminal or BLUESTAR is that when it's  
 7 not visible with the naked eye, you might be able to see  
 8 it with the BLUESTAR? I mean, that's the --

9 A. Yeah. Absolutely. Yes.

10 Q. -- that's the point, right?

11 A. I had to think about your question. Yeah.  
 12 Absolutely.

13 Q. Okay. And in this case, there was some  
 14 discussion of the need for a BLUESTAR as re -- as it  
 15 might relate to paths from the body or paths in the  
 16 house. Do you remember that?

17 A. I remember just the need for BLUESTAR.

18 Q. So nobody ever told you what it was for or  
 19 what you were looking for?

20 A. Well, they would have had to. They would  
 21 have said, We're looking for, you know, presence --  
 22 presence of a cleanup or something. I mean, We're  
 23 looking for blood. That's what BLUESTAR does.

24 Q. Okay. So you knew that, but there was sort  
 25 of a logic to it that -- that -- maybe that where Mr.

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2021

1 Faria had gone? I mean, he was your suspect, right?  
 2 A. I believe at that point, yeah.  
 3 Q. Absolutely, right?  
 4 A. Yeah.  
 5 Q. So you could maybe -- let me ask you this.  
 6 In --  
 7 A. Okay.  
 8 Q. -- is it a principle of investigations that  
 9 if you have a suspect and there are known facts about  
 10 the suspect --  
 11 A. Okay.  
 12 Q. -- and there are known facts about the  
 13 scene, --  
 14 A. Okay.  
 15 Q. -- that if it is impossible for someone to  
 16 have done the crime because of the known facts having a  
 17 contradiction, that person is cleared?  
 18 A. So it's either one or the other?  
 19 Q. No. I'm just talk --  
 20 A. You know what I'm saying? Like I feel  
 21 like --  
 22 Q. No.  
 23 A. -- we're saying there's -- there's only one  
 24 answer to that, and, I mean, certainly we're going to  
 25 have facts that don't support it and we're going to have

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1 facts that do support it. It doesn't mean that one set  
 2 of facts speaks to guilt or innocence altogether.  
 3 Q. Well, okay. Let me try to get at this a  
 4 different way. I was kind of taking an extreme case and  
 5 I want -- I want to kind of work an extreme case.  
 6 A. Okay.  
 7 Q. So we'll go back to the example we had  
 8 earlier in the day. Let's say there's a murder and you  
 9 talk -- there's a husband and wife, and you talk to the  
 10 children, and they say, Last week, dad said he was going  
 11 to kill mom.  
 12 A. Okay.  
 13 Q. That puts dad right in the bullseye as  
 14 being a suspect, right?  
 15 A. Yeah. I mean, it depends on how the -- the  
 16 child's statement was obtained, but sure.  
 17 Q. But, I mean, it would make -- it doesn't  
 18 mean he did it, but it means there's definitely -- he's  
 19 a suspect --  
 20 A. Yeah.  
 21 Q. -- at that point?  
 22 A. There's some -- there's something we have  
 23 to look up.  
 24 MR. PLEBAN: Bevis, where are we going with  
 25 all this? I mean, you know -- you know, I guess we can

66

1 go through hypotheticals all day long. If you want to  
 2 cite one, Shockley is -- is a prime example of some  
 3 police officer who said he was going to kill a guy and  
 4 it turned out that he didn't. So, I mean, you know, I'm  
 5 not sure where we're going with all this.

6 I mean, you have a lawsuit. I got that. I mean,  
 7 it's -- it's kind of fun, I guess, to hypothesize all  
 8 this stuff, but I'm not sure that this is reasonably  
 9 calculated to lead to the discovery of admissible  
 10 evidence in this case. I mean, I'm willing to sit here  
 11 and indulge you, but, I mean, I just -- where are we  
 12 going?

13 MR. SCHOCK: Well, and I --  
 14 MR. PLEBAN: I mean, we can --  
 15 MR. SCHOCK: -- first --  
 16 MR. PLEBAN: -- we can argue it back and  
 17 forth, too. I mean, I don't -- you know, I just don't  
 18 know where we're going.

19 MR. SCHOCK: I think it's very important to  
 20 understand the man's understanding of how can -- how  
 21 these investigations are conducted and how people are  
 22 excluded, because that's where I'm going, because that's  
 23 really important to the case. It's the heart of the  
 24 case.

25 MR. PLEBAN: But he had a role here. Okay?

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1 And -- and his -- his role, you know, a military term is  
 2 I guess he was a grunt in this. All right? He -- he  
 3 wasn't in a command position, so he had a role, he  
 4 performed that role. Okay? You're claiming that he did  
 5 that somehow improperly, the role that he performed.

6 Now, all these hypotheticals I'm not sure get us  
 7 any place, you know. Whether he agrees, disagrees with  
 8 somebody else's is -- is -- is not relevant here. So, I  
 9 mean, why don't we get to what he did and -- and -- and  
 10 find out what he did and what he didn't do? I mean,  
 11 that's why we're here, aren't we?

12 MR. SCHOCK: Well, --  
 13 MR. HEIGELE: Join.  
 14 MR. SCHOCK: -- I would like to continue  
 15 this line of questioning.

16 MR. PLEBAN: You're free to do that.  
 17 MR. SCHOCK: Okay.  
 18 MR. PLEBAN: I'm just not sure we're  
 19 getting any place though.

20 MR. SCHOCK: And I -- I think we are and  
 21 it's where I want to get, so if you --  
 22 MR. PLEBAN: Okay.

23 MR. SCHOCK: -- don't mind, and I -- and I  
 24 will certainly respect your desire to keep it moving.  
 25 Fair enough?

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2022

1 MR. PLEBAN: Yeah. Just show my objection  
 2 to the hypothetical and show mine as a continuing  
 3 objection --

4 MR. SCHOCK: Absolutely.

5 MR. PLEBAN: -- to the hypothetical so I  
 6 don't have to keep interrupting. I don't want to  
 7 interrupt the flow.

8 MR. HEIGELE: Join.

9 Q. (By Mr. Schock) Let's get back to it.

10 A. Okay.

11 Q. You have been trained in how to conduct a  
 12 criminal investigation, true?

13 A. Yes.

14 Q. And I think you said earlier that you  
 15 considered yourself in 2011 to be accomplished in that  
 16 field due to experience, mentoring and formal training,  
 17 correct?

18 A. Yes.

19 Q. Okay. And is it true that you should  
 20 always examine your known facts against the suspect to  
 21 see if there are inherent contradictions which would  
 22 exclude possibly a suspect from having had committed --  
 23 having committed the crime?

24 A. Yeah. I mean, again, it's every fact.

25 Q. Okay. Well, there are certain facts

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1 A. Yes, sir.

2 Q. -- did anybody explain to you what the  
 3 purpose of the test was in terms of fitting into a  
 4 theory of how Russ Faria might have committed this  
 5 murder?

6 A. To see if there was any -- any blood  
 7 evidence in certain areas of the house, specifically the  
 8 kitchen -- kitchen/dining room, I think it was.

9 Q. Did anybody tell you why that might be  
 10 relevant to the investigation?

11 A. I don't recall if we had a conversation  
 12 about it. I -- I get kind of in a mode when I -- like  
 13 the forensics thing, that's -- that's my bread and  
 14 butter. I like it. I enjoy it. That's why I went to  
 15 school for it. So maybe I get distracted and -- and  
 16 really focused on what I'm doing and not what people are  
 17 saying, so I don't recall a conversation being had  
 18 specifically about it or -- you know, it was, We need to  
 19 test this area with BLUESTAR. Let's do that. I like  
 20 BLUESTAR.

21 Q. Okay. Now, how many times had you done  
 22 BLUESTAR tests before this?

23 A. Blue --

24 Q. And I am not talking -- let me back up.

25 A. Okay.

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1 sometimes called forensic facts, right?

2 A. Yes.

3 Q. So for --

4 A. Scientific, sure.

5 Q. So, for example, there was no question that  
 6 Betsy Faria had been stabbed?

7 A. Well, I mean, yeah, you could see that, at  
 8 least once.

9 Q. And that's a little different from the time  
 10 of death, which is not -- that's a fact you would like  
 11 to know, but that's not an absolute, firm fact in this  
 12 case, correct?

13 A. Yeah. It's just -- it's another fact.

14 Q. But there's a difference between those two  
 15 facts? One is an absolutely known fact and one is a  
 16 fact you would like to find out, right?

17 A. Yeah. That makes sense.

18 Q. Okay. And, in fact, in this case, it's  
 19 really hard to know the exact time of death, right?

20 A. I -- I don't know that. I'm not -- that's  
 21 usually done by a medical professional. I don't -- I  
 22 don't usually have any -- I -- I've never had any  
 23 involvement in determining the time of death.

24 Q. Okay. When you were involved in this  
 25 BLUESTAR test, --

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1 Q. I'm not talking about training. I'm  
 2 talking about actually doing it in a investigation.

3 A. BLUESTAR, I don't know.

4 Q. Luminal?

5 A. Luminal, maybe half a dozen times. Not  
 6 very many. The situation doesn't present itself very  
 7 often.

8 Q. Okay. So -- but you have experience with  
 9 it? You used it a half a dozen, approximately, times?  
 10 You knew how to do it?

11 A. In -- in an investigation; --

12 Q. Correct.

13 A. -- is that what you're asking me? Yeah.  
 14 Yes.

15 Q. And you had done it in the -- in practice  
 16 in school, too? You just described that.

17 A. Yeah. I done it -- I've done it more in  
 18 practice. I mean, again, that's my bread and butter. I  
 19 like it.

20 Q. Okay. Is there a function of filming in  
 21 connection with a BLUESTAR test?

22 A. Typically, sure.

23 Q. And what is that function?

24 A. To attempt to capture the chemical  
 25 luminescence in a photograph.

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2023

1 Q. And it gets back to that pig blood we were  
 2 talking about where you cleaned it up and couldn't see  
 3 it with your eyes?

4 A. Mm-hm.

5 Q. But you could see it with the illumination  
 6 agent?

7 A. Correct.

8 Q. And then you take a picture of that to  
 9 record that, right?

10 A. I don't know that we did in the -- in  
 11 college. I don't -- I don't remember taking  
 12 photographs. We very well could have, but I just don't  
 13 recall.

14 Q. In all of your prior six approximate times  
 15 you had done these BLUESTARS, had you taken photographs?

16 A. I don't recall specifically, no.

17 Q. Do you --

18 A. What we -- what we usually do is -- is, I  
 19 mean, we've -- you've got the BLUESTAR. That's a  
 20 presumptive test. So maybe I'll make a correlation  
 21 here. It's no different than if you're doing a PBT on  
 22 the side of the road. That's a presumptive test,  
 23 agreed?

24 Q. Yeah.

25 A. So we do the presumptive test and then we

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1 back it up with -- with a forensic test like you're  
 2 saying, a scientific test. So, I mean, that -- that's  
 3 -- that's a forethought. I know that I'm going to try  
 4 to document, I'm going to see if it's present, and then  
 5 I'm going to back it up with a forensic test, too. I am  
 6 going to take samples. I am going to have somebody tell  
 7 me that there is or is not blood present, --

8 Q. And that --

9 A. -- so --

10 Q. -- that happened in this case, right?

11 A. The -- the items were seized. I -- I have  
 12 never seen the forensic reports for it. I -- I don't  
 13 know if it -- what it tested for or if it was tested or  
 14 anything.

15 Q. So as you sit here right now, you -- if I  
 16 tell you right now that, in fact, the test came back  
 17 that the cabinets and the tiles that were seized were  
 18 negative for blood, this would be the first time you  
 19 ever heard of that?

20 A. To the best of my recollection, yeah. I  
 21 have never -- I have never seen those forensic reports.

22 Q. Okay. Well, had you ever heard that that  
 23 was the situation?

24 A. Not that I remember. No.

25 Q. You were in the room and participated in

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1 covering the windows, right?

2 A. Yeah. I would have had some role in that.

3 Yes.

4 Q. Who was there? Who was there?

5 A. Oh, there -- there was a handful of -- it  
 6 -- it takes more than one person.

7 Q. Hang -- hang on one second.

8 A. Okay.

9 Q. This thing has stopped.

10 MR. SCHOCK: I may be out of memory. I  
 11 don't know how to make it work, so I'm -- we're not  
 12 going to video anymore unless I can -- it's not working,  
 13 guys, so the video is over.

14 MR. RETTER: Okay. At 10:55 a.m.

15 Q. (By Mr. Schock) I asked you who was with  
 16 you when you did the BLUESTAR test?

17 A. If I remember correctly, I -- I know  
 18 McCarrick was there, I want to say at the time her name  
 19 was Becky Mueller, and Tabitha, at the time her name was  
 20 Markwardt. Other than that, I don't -- there -- I -- I  
 21 know there was at least one other person there, I just  
 22 don't remember who it was.

23 Q. And -- and there was a --

24 A. Or maybe a couple. I don't know.

25 Q. There was a search warrant to do that test,

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1 right?

2 A. Yeah. To the best of my knowledge, yeah.

3 Q. Did you ever see it?

4 A. I'm sure I did. I don't recall  
 5 specifically when or anything, but, yeah, I'm sure I  
 6 did.

7 Q. Did you have knowledge that the scene had  
 8 not been secure between the time of Mr. Faria's release  
 9 on the 29th through the day of the BLUESTAR test?

10 A. I don't know that I knew that at the time.  
 11 I believe I found that out later.

12 Q. When -- in your work as a forensic person,  
 13 you said this is an area that you like to do and you  
 14 know a lot about it, right?

15 A. I enjoy it, yes.

16 Q. Well, do you consider yourself an expert in  
 17 that area?

18 A. Nope. Nope. That's an ever-changing  
 19 field.

20 Q. Try to keep up with it?

21 A. The best I can, --

22 Q. Okay.

23 A. -- and I don't have much room for indulging  
 24 in the things I like in the current role I'm in --

25 Q. Is it a --

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2024

1 A. -- unfortunately.

2 Q. -- true statement that a BLUESTAR test is  
3 compromised if there has been a period of time before  
4 the test when the scene was not secure?5 A. I don't know that. I don't know if there's  
6 a time frame on it or not.7 Q. Well, I'll submit to you that in this case,  
8 the -- the -- the scene --

9 A. Mm-hm.

10 Q. -- the house --

11 A. Mm-hm.

12 Q. -- was secure, and you know that, the night  
13 of the murder, right?

14 A. Yes.

15 Q. And there was an investigation done?

16 A. Yes.

17 Q. All right. And then on the 29th, Mr. Faria  
18 got to his house after his release and there were no  
19 police there, there were no yellow tapes or anything.  
20 Were you aware of that?21 A. No. I mean, if -- if they weren't there,  
22 they weren't there. I wasn't there.23 Q. Okay. And then you did this BLUESTAR test  
24 on the 4th, right, 3rd or 4th?

25 A. It was one of those. I want to say it was

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1 there's -- the chemicals are still present to react with  
2 it. So, I mean, it's -- is it safe to say at that point  
3 that that hasn't been secured for 20 years? You know --  
4 you know what I mean? So that's -- again, that's why  
5 it's a presumptive test.6 Q. Well, but your -- is it a fair statement  
7 that one of the things you were looking for was evidence  
8 of clean-up?

9 A. I was looking for blood.

10 Q. That's all?

11 A. I -- I was looking for the positive  
12 presence and a chemical reaction from BLUESTAR with  
13 blood. That's what I was looking for.

14 Q. I understand.

15 A. Okay.

16 Q. So you participated -- let me ask you one  
17 more question.

18 A. Okay.

19 Q. Did you all have a meeting before you went  
20 over there to discuss what you were going to do and how  
21 you were going to do it?22 A. We -- we may have talked about it. I don't  
23 know if it was a meeting. I mean, we're not in one  
24 office. We weren't at the time. It would have been  
25 discussed. I don't -- it wasn't -- from the best of my

79

1 the 3rd.

2 Q. Okay. The 3rd?

3 A. Okay. Yes.

4 Q. Did you have any concern that -- that if  
5 you're looking for evidence of clean-up, that somebody  
6 could have cleaned up later?7 A. Well, I'm going to go right back to I was  
8 asked to perform a test, not -- not develop hypotheses  
9 about what had happened in between. I was asked to  
10 perform a test.

11 Q. Well, in your training, --

12 A. Mm-hm.

13 Q. -- did they tell you in connection with  
14 BLUESTAR and Luminal tests, illumination tests, that you  
15 should do it on a scene that's been secure?

16 A. Not that I recall. No.

17 Q. Never came up?

18 A. Not that I recall. No.

19 Q. Did it make logical sense to you?

20 A. Well, I -- let's talk about rules of best  
21 evidence. Yeah, if we can have it secured, absolutely,  
22 but, I mean, you see cases -- I have watched I.D. You  
23 see cases where they do BLUESTAR, you know, 25 years  
24 later by pulling up carpet and something has been  
25 saturated and BLUESTAR still reacts with it, because

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1 knowledge, wasn't a -- a meeting. We didn't gather in  
2 one particular area.3 Q. How did you all decide who was going to do  
4 what during the test?5 A. That -- we would have done that on the fly.  
6 I was -- if I remember right, I was the only one that --  
7 that had ever had any experience with that, so they --  
8 they would have -- it would have defaulted to me to do  
9 the actual application.10 Q. Now, the application consists of you got to  
11 get the light out of the room, right?

12 A. As best you can.

13 Q. Which -- and you put up some cardboard on  
14 the windows, things like that, correct?

15 A. Yap. Yap.

16 Q. Did all that?

17 A. Yap. Yes.

18 Q. You apply the illuminating material by some  
19 kind of a spray or something; is that right?20 A. Yeah. Well, it's -- it's really water that  
21 you put a tablet in. You know, you have to have  
22 distilled water, and then you -- they -- depending on  
23 the kit you're using. So you can have a -- there's a  
24 kit that comes in a box and it's what I'll call it is  
25 like a standard BLUESTAR application. It comes with a

80

2025

1 little spritzer. Or you have -- had at the time, I  
 2 don't -- I don't know what they've done now with it, but  
 3 you had a tube, looks like -- I can't think of it --  
 4 anyway, it's -- it's a tube and it has tablets in it, so  
 5 that's called -- that's a BLUESTAR magnum. That's a  
 6 higher concentrate. So you would mix that in a spray  
 7 bottle. So instead of a spritz -- I keep doing this,  
 8 but instead of a spritzer where you push down, it's a  
 9 spray bottle.

10 Q. I understand.

11 A. Okay.

12 Q. And once the room is -- has been darkened  
 13 by putting up cardboard and --

14 A. Right.

15 Q. -- closing all the curtains, it's ready to  
 16 go, right? You just go ahead and do it, fair enough?

17 A. Yeah. I mean, you have to -- you have to  
 18 be mindful of what you're doing and where you're going  
 19 because you're in the dark, so --

20 Q. Good point. Yeah.

21 A. Yeah.

22 Q. You have to know where the furniture -- in  
 23 fact, the pictures show the furniture kind of -- some of  
 24 the things were put up. Did you do that?

25 A. I don't -- I don't think we did. No.

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1 luminescence, you have to watch what you're doing so you  
 2 don't overapply and make it runny. I mean -- I mean,  
 3 it's -- I can't give you bullet points of how you do --  
 4 like I say, you mix it up and you spray and you look for  
 5 chemical luminescence. That's what you do.

6 Q. Okay.

7 A. I mean, you just got to kind of play with  
 8 what -- what the scenario is that you're given.

9 Q. Do -- do you spray it -- so here -- here we  
 10 are in this room, it's whatever it is, I don't know, ten  
 11 feet by fifteen feet.

12 A. Okay.

13 Q. Do you just kind of spray it around the  
 14 room or do you spray it on the areas you want to look  
 15 at?

16 A. You -- you try to do like a swath, like an  
 17 overall, and you -- you follow your trail, follow your  
 18 trail if you have one. If you don't have one, I mean,  
 19 you're -- I mean, if you don't have anything to follow,  
 20 you're not following it, right? So you got an idea of  
 21 where something may have happened and you start there.

22 Q. Okay.

23 A. And I -- I always try -- I don't -- I mean,  
 24 there's no clear-cut way of how to do it, but I always  
 25 try to start at the furthest point from my egress so I

83

1 Q. Okay. Maybe somebody else did that  
 2 earlier?

3 A. Yeah. I don't know.

4 Q. I mean, you don't want to bump into things.  
 5 Did -- fair enough? I mean, you don't want to get --  
 6 hit a table and get hurt or something, right?

7 A. Yeah. I mean, it's dark, so you have to be  
 8 -- I mean, you have to be ready to -- to try to capture  
 9 it on film, too.

10 Q. Would it be a fair statement that you don't  
 11 walk in the area where you are going to do your testing,  
 12 the relevant test area?

13 A. Yeah.

14 Q. Try to keep it pure?

15 A. Sure, the best you can.

16 Q. So once you do your -- you use that spray  
 17 bottle, right?

18 A. Yeah. I believe I use the sprayed bottle.

19 Q. And then how long does it take until this  
 20 thing starts to function?

21 A. The -- the chemical luminescence is  
 22 actually a lot quicker. The -- the -- or is a lot  
 23 faster, but still slower than it -- than it fading. I  
 24 mean, it -- you have to -- it's a science experiment.  
 25 You -- you have to work with it. If you see some

82

1 can work backwards. Does that make sense?

2 Q. Toward the egress?

3 A. Yeah. Like find a safe way in and then  
 4 work backwards, so --

5 Q. Okay.

6 A. I mean, we boot up and do all that stuff,  
 7 too.

8 Q. Right. Did -- you did all that in this  
 9 case?

10 A. Yeah.

11 Q. Doesn't work on rugs, right?

12 A. What doesn't?

13 Q. The -- the illumination.

14 A. No. It should.

15 Q. Should? It works on the rug?

16 A. Yeah.

17 Q. Did you -- did the place where the body was  
 18 light up? Right?

19 A. I don't know that we did -- I don't  
 20 think --

21 Q. Did you spray there?

22 A. Yeah, and I think there was some -- I think  
 23 the rug was -- the carpet was removed, --

24 Q. Oh.

25 A. -- if I remember right.

84

2026

1 Q. I see. So you did this test, and I would  
2 like you to tell me what you saw that illuminated.

3 A. What areas of the kitchen?

4 Q. Correct. Well, anywhere in the house that  
5 you saw illuminated, --

6 A. There --

7 Q. -- I want you to tell me.

8 A. From what I remember, it -- it -- it was a  
9 faint luminescence, and kind of patchy areas, and then  
10 there was -- it looked like it was on a cabinet face, so  
11 those would have been areas of interest that we would  
12 have -- would and apparently did seize to do forensic  
13 testing on.

14 Q. Okay. So you saw a cabinet area?

15 A. A cabinet facing.

16 Q. Yeah.

17 A. And I want to say, I'm not 100 percent  
18 sure, but I want to say it was to the -- like if you're  
19 looking, it's a galley kitchen, so if you're looking  
20 down the galley, it's to the right. I'm pretty sure  
21 that's where it was.

22 Q. And in your training and experience, is one  
23 of the things you're supposed to look for wiping  
24 motions?

25 A. You -- you can. I mean, that's -- if

85

1 A. I wouldn't say it was in a straight line,  
2 but it was towards a general area, it seemed. I mean,  
3 it was -- again, we've got to act quick, we've got to be  
4 fluid with this, so it was in a general direction, I'll  
5 say.

6 Q. Was there more than one path?

7 A. I remember there being certain areas that  
8 -- I mean, it would have -- it would have suggested that  
9 there was two different directions that were traveled or  
10 they could have all been traveled at once. I don't  
11 know.

12 Q. Okay. Did you take photos?

13 A. Yes.

14 Q. Is that part of the standard protocol?

15 A. There -- we don't really have a standard  
16 protocol for it, but that would be something that I  
17 would attempt to do, sure.

18 Q. Have you done photographs in every case you  
19 have worked on that was -- what did you say -- it was  
20 approximately six?

21 A. I don't know. I don't know if we had the  
22 ability to take them early on. We haven't had as  
23 advanced -- as advanced of equipment as we do now.

24 Q. Okay.

25 A. So if I would have done one back in like

87

1 you're going to further assess the -- the scene, then,  
2 yeah, I mean, you can see if there's wiping motions.  
3 Sure.

4 Q. And -- and sometimes those show up, right?

5 A. Sometimes. I mean, every case is  
6 different.

7 Q. Have you ever seen those show up?

8 A. In any case?

9 Q. Have you ever seen wipe -- yes.

10 A. Yeah. We -- I've staged that in -- in  
11 practicals and stuff before. Like we -- we -- I  
12 remember we specifically did that in college.

13 Q. And by that, you mean you would maybe wipe  
14 some blood on a flat surface and then it would -- you  
15 would see the place where the wiping had occurred?

16 A. Yeah.

17 Q. All right. Did you see any wiping in this  
18 case?

19 A. Not that I recall. I remember it just  
20 being areas where it looked like the -- well, not looked  
21 like -- where the chemical luminescence was present. I  
22 mean, there was just areas.

23 Q. Did it show a pathway? Sort of -- you  
24 know, did you see luminescence in a line going in any  
25 particular direction?

86

1 2004, I don't -- we would have had a 35 millimeter then.  
2 You would have had to overexpose, so I -- I don't know  
3 if I took photos on those or not.

4 Q. There's some kind of a specialized camera  
5 that's used, right?

6 A. Not necessarily. You can do it with a 35  
7 millimeter.

8 Q. Okay. Some kind of a filter that's used?

9 A. Hm-mm.

10 Q. You just -- any old -- I mean, could you do  
11 it on your iPhone?

12 A. No, because you can't -- well, not that I  
13 know of. I can't control the -- the aperture and the  
14 shutter speed on my iPhone, so you have to manipulate  
15 the camera --

16 Q. Okay.

17 A. -- to be able to manipulate the camera.

18 Q. Did you know how to do that?

19 A. Yeah.

20 Q. Okay. That's part of your training and  
21 experience?

22 A. More my experience than anything, yeah.

23 Q. Okay. And you took those photos? You took  
24 a lot of photos, right?

25 A. We -- we took a lot of photos. It --

88

2027

1 again, it's all hands on deck when you're doing  
2 something like this, so more than one --  
3 Q. How many cameras were there?  
4 A. There would have just -- well, there -- we  
5 probably would have had both our cameras out there. I  
6 don't recall if we had both of them or not.  
7 Q. Okay. Who's we? I mean, I didn't know  
8 there were two cameras until right now.  
9 A. The people that I said were out there  
10 before. We would have had --  
11 Q. Okay.  
12 A. -- our cameras.  
13 Q. Did you operate a camera?  
14 A. I -- I'm sure I did at some point in time.  
15 Yeah.  
16 Q. Do you know who else operated a camera?  
17 A. No. It -- it would have been one of the  
18 other crime scene -- crime scene people, so it would  
19 have been Tabitha or Becky.  
20 Q. Did you have any knowledge at that time  
21 that there were any problems with the camera?  
22 A. We knew -- we didn't know what -- how the  
23 cameras were affected. We knew that our equipment  
24 wasn't the best. So, again, that's -- that's why we try  
25 to bolster things with forensic evidence, too.

89

1 Q. Ah. Right.  
2 A. So --  
3 Q. Take -- take the cardboard off?  
4 A. Yeah. Yeah. Yeah.  
5 Q. Okay. And then you -- you left, fair  
6 enough?  
7 A. Sure.  
8 Q. Write a report?  
9 A. Yeah.  
10 Q. And then when is the next time you saw the  
11 photographs?  
12 A. I don't -- I don't remember exactly when I  
13 saw them next.  
14 Q. What was your job once the photographs were  
15 taken as far as getting the photographs developed?  
16 A. We don't develop our photographs typically.  
17 We put them on a disc and put them into evidence.  
18 Q. Put them into evidence?  
19 A. Yeah.  
20 Q. Did you have anything to do with that  
21 process?  
22 A. I don't know if I did or not. That -- that  
23 may have been handled by the evidence techs also.  
24 Q. So it's a digital camera?  
25 A. Yeah. Those -- yeah. That was a digital.

91

1 Q. You mean taking the cabinets in and sending  
2 them to the lab?  
3 A. Mm-hm.  
4 Q. How many photos do you think you took?  
5 A. I don't know.  
6 Q. Do you know how many photos the other  
7 person took?  
8 A. No. Again, it's -- it's all hands on deck.  
9 We're just trying to get the process done.  
10 Q. How long do you think you spent taking  
11 photographs, if you can make an estimate?  
12 A. I -- I can't. I don't know.  
13 Q. I mean, does this take an hour or does this  
14 take five minutes or somewhere in between?  
15 A. Anywhere in between. I mean, it -- I don't  
16 -- I don't think it would have taken five minutes. It's  
17 -- again, you're working in the dark. You're dealing  
18 with all these variables, and there's no way to put a  
19 specific time on it.  
20 Q. Okay. Now, then, the photographs -- well,  
21 after -- after you took the photographs, did you do  
22 anything else?  
23 A. We -- you know, we would have tried to --  
24 we try not to leave people's houses a mess, so, I mean,  
25 we would have undone what we did.

90

1 Those photographs were with a digital camera.  
2 Q. And did -- so did you -- and I'm sorry.  
3 Maybe you said the answer. I didn't get it. Did you  
4 put the photographs on the disc or did somebody else do  
5 that?  
6 A. I don't recall.  
7 Q. Don't recall?  
8 A. I have done that 1,000 times.  
9 Q. Know how to do it?  
10 A. Yeah. I mean, I have no problem --  
11 Q. Easy-peasy?  
12 A. Yeah.  
13 Q. And how long after the BLUETAR -- BLUESTAR  
14 test do you think you put it on the disc?  
15 A. Again, I don't know that I did, and I don't  
16 -- I'm not sure.  
17 Q. Did you, in connection with the -- any part  
18 of this case, come to look at those photographs again?  
19 A. Yeah. I -- I would have looked at them at  
20 some point.  
21 Q. When's the next time you looked at those  
22 photographs?  
23 A. I don't know.  
24 Q. Were the photographs on one of these  
25 cameras where you can kind of -- after you have taken

92

2028

1 the photo, you can flip through and actually look at the  
 2 screen and see the photographs you have taken?  
 3 A. I think so. Yeah.  
 4 Q. Okay.  
 5 A. I think so.  
 6 Q. Did you look at them --

7 MR. RETTER: Just one point of contention,  
 8 if you don't mind, Bevis. I'm not sure if we know even  
 9 the first time yet when he saw the photographs, if that  
 10 makes any sense to you. You said the next, and I'm just  
 11 not sure when the first was.

12 MR. SCHOCK: Fair enough.

13 Q. (By Mr. Schock) I was -- just I was trying  
 14 to get to this idea of flipping. Some of these cameras  
 15 I have seen, you take a picture and you can -- you can  
 16 actually look at a screen --

17 A. Yeah. It's -- it's got a --

18 Q. -- and see it?

19 A. -- like an LCD screen that like you can  
 20 preview. Yeah.

21 Q. And did you preview the photos you took  
 22 when you were at the scene?

23 A. Not that I remember. No.

24 Q. Did you look at the photos as you were  
 25 putting them on the disc?

93

1 A. I -- again, I don't know that I did put  
 2 them on the disc. I -- I don't recall doing that or --  
 3 I could have, but I don't remember.

4 Q. At some point, did you reach a conclusion  
 5 that there was a problem with the camera and/or the  
 6 development of the pictures?

7 A. Yes, at some point, I mean, obviously.

8 Q. What -- what was the problem?

9 A. I -- I don't know exactly like technically  
 10 what the problem was, but there was -- there was a  
 11 problem according to Nikon with -- I mean, we would have  
 12 to look at the service records, but we had to send them  
 13 in to Nikon to fix them. Yeah. Nikon.

14 Q. Okay. Did you see the photographs before  
 15 the first trial, either on the screen of the camera or  
 16 as a result of pulling the data off the camera, looking  
 17 at it on a computer, or any other method?

18 A. I -- I don't remember if I did or not.

19 Q. Well, you testified at the first trial that  
 20 they showed absolutely nothing, right?

21 A. Okay.

22 Q. Does that sound right?

23 A. That's -- that's what I testified to. Yes.

24 Q. Well, if you -- do you agree that if you  
 25 testified to that, you must have seen them?

94

1 A. Yes.  
 2 Q. And do you remember at the second trial,  
 3 the photographs were produced to you, right?  
 4 A. Yes.  
 5 Q. And they did show some luminescence, right?  
 6 A. What's that?  
 7 Q. The photographs.  
 8 A. I -- I don't -- I don't remember. That  
 9 wasn't asked of me in the second trial to the best of my  
 10 knowledge. From -- from what I remember, that -- it  
 11 wasn't asked if -- if the photographs showed  
 12 luminescence, so I don't -- I don't remember looking for  
 13 that in the photographs.  
 14 Q. Okay.  
 15 A. And then I think that goes back to the  
 16 first trial also, is that there was -- there was a  
 17 mischaracterization of what I was saying, was -- like  
 18 you just asked me, was there luminescence in the photos,  
 19 so my answer to that in the first trial was, No, they  
 20 didn't show anything, they showed nothing. So they  
 21 didn't show any luminescence.  
 22 Obviously, if you open a shutter on a camera,  
 23 you're going to get something. That's a photograph --  
 24 it could look pitch black. That's a photograph of  
 25 something. There's just not enough light there to

95

1 expose what it is.  
 2 Q. Yeah.  
 3 A. So --  
 4 Q. Let's -- let's look at a -- at a -- at a  
 5 page here. Okay?  
 6 A. Okay.  
 7 Q. Okay. So we're going to go to page  
 8 Plaintiff's 1863, and, sir, we have these books over  
 9 here, and I will show you a picture, which will not be  
 10 very good.  
 11 A. Good Lord.  
 12 MR. HEIGELE: Do you know which tab that  
 13 is, Bevis?  
 14 MR. SWANSON: I want to say 52.  
 15 Q. (By Mr. Schock) Okay. Sir, I'm going to  
 16 hand you a book, and this is a binder with a bunch of  
 17 pages in it.  
 18 A. Okay.  
 19 Q. And what we are doing in this process is we  
 20 printed out all these endless pages of data, and that's  
 21 page, as I said, 1863, and, obviously, in front of you,  
 22 there's kind of a smudge, it's kind of hard to see  
 23 there, right?  
 24 A. Yeah.  
 25 Q. I have a better of that on my computer, and

96

2029

1 let me show it to you, if I may.  
 2 A. This is a -- like a black and white  
 3 photo --  
 4 Q. Yeah.  
 5 A. -- black and white copy of a photo.  
 6 Q. And I'm going to -- now I'm going to show  
 7 you -- you guys can see it's the one that's -- it's 1763  
 8 -- 1863, and this is one of the photos you took, and  
 9 there's a smudge there, right?  
 10 A. That looks like it. Yeah.  
 11 Q. Is that what luminescence looks like on a  
 12 photo?  
 13 A. It could. Sure.  
 14 Q. Okay. So, at least for that photo, there  
 15 was some luminescence, right?  
 16 A. Yes.  
 17 Q. And there's some other smudges on some  
 18 other photos. Do you agree with that?  
 19 A. I -- I would have to see them.  
 20 Q. Okay.  
 21 A. I mean, I would have to look at them.  
 22 MR. SCHOCK: Can you find me one?  
 23 Q. (By Mr. Schock) He'll find one of those.  
 24 A. Okay.  
 25 Q. Now, this is about as small as you're going

97

1 A. We're just look -- we're supposed to look  
 2 for the presence of it, so any presence of it.  
 3 Q. Okay. So --  
 4 A. Not specifically trained to say, Hey, find  
 5 the small marks.  
 6 Q. Right.  
 7 A. Just find it.  
 8 Q. Find all the marks, right?  
 9 A. Use it and find it. Yeah.  
 10 Q. Okay. So the fact that a mark is small  
 11 doesn't mean it would be ignored? I mean, in fact,  
 12 you're supposed to see the small ones and the big ones,  
 13 fair enough?  
 14 A. Yeah. That's fair.  
 15 Q. Okay. All right. All right. Do you know  
 16 as you sit here today how the photographs ended up in  
 17 the hands of defense counsel?  
 18 A. No, I do not.  
 19 Q. You were presented with the photographs in  
 20 the second trial, right?  
 21 A. Yes. Not all of them. Some of them, yes.  
 22 Q. Okay. And did you make any representations  
 23 after the BLUESTAR test to any person that you had seen  
 24 a path to any particular part of the kitchen?  
 25 A. I -- I don't recall if I did or not.

99

1 to get. Let's go to page 1850, please.  
 2 A. Mm-hm.  
 3 Q. I know it's hard to see, and the numbers  
 4 are on the side. Do you see there?  
 5 MR. RETTER: Yeah. There's page PLT 1850.  
 6 A. 1850, you said?  
 7 Q. (By Mr. Schock) Yeah.  
 8 A. Okay.  
 9 MR. SCHOCK: And -- and here's a -- here --  
 10 here it is on the computer, guys, like this?  
 11 MR. HEIGELE: Mm-hm. I got it.  
 12 Q. (By Mr. Schock) And there's -- at the top,  
 13 there's -- in the -- in the colored one, there's a red  
 14 on the right and a green on the upper left. Do you know  
 15 what those things are?  
 16 A. Not off the top of my head. No, sir.  
 17 Q. Okay. And if you look down, you almost  
 18 have to be Sherlock Holmes, but --  
 19 A. I'm getting a little glare.  
 20 Q. -- there is -- there is a little blue mark  
 21 on there, right?  
 22 A. Yap.  
 23 Q. Okay. Now, are you trained to look for  
 24 very small mark -- small evidence of luminescence like  
 25 that?

98

1 Q. Okay. Did anybody ask you if you had seen  
 2 a path to any part of the kitchen or any other part of  
 3 the house?  
 4 A. I don't recall if I -- I don't recall if  
 5 they did or not.  
 6 Q. Okay.  
 7 MR. SCHOCK: It's 11:20. I'm at -- I'm at  
 8 a logical break time for me. Are -- are you guys  
 9 comfortable with it?  
 10 MR. PLEBAN: I need a potty break.  
 11 MR. SCHOCK: Okay. Let's go ahead and  
 12 break.  
 13 (Break was taken.)  
 14 Q. (By Mr. Schock) So let's go back on the  
 15 record.  
 16 A. Okay.  
 17 Q. Mr. Merkel, --  
 18 A. Sure.  
 19 Q. -- you said that you turned those photos  
 20 into evidence and put them -- you had them on some kind  
 21 of a disc and you turned the disc into evidence?  
 22 MR. RETTER: I think that mischaracterizes  
 23 his testimony, Bevis.  
 24 MR. SCHOCK: That's why I was asking, to  
 25 get that straight.

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2030

1 A. Yeah. It -- it would have been done. That  
2 would have been the process.

3 Q. (By Mr. Schock) Okay.

4 A. Whether or not I did it, we do that so  
5 much, each one of us do that so much, so I can't say  
6 that I did it in this specific case.

7 Q. Okay. You don't remember doing it?

8 A. No. I don't.

9 Q. But you understand it was done. When that  
10 is done by you, do you always have a look at the photos  
11 before you put them on the disc?

12 A. Not always. No.

13 Q. Did you do that in this case?

14 A. I don't recall. I don't know if I did or  
15 not.

16 Q. Okay. Do you know anything about what  
17 happened to that disc after it went into the evidence?

18 A. No.

19 Q. Have you received -- and I am just going to  
20 fire these because I have them on my list.

21 A. Okay.

22 Q. Not in order. Have you received any  
23 information from Lincoln County as to whether they're  
24 going to indemnify you in this case by either providing  
25 a defense for you, paying any settlement or paying any

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1 Q. (By Mr. Schock) That's the insurance  
2 coverage suit.

3 A. Okay.

4 Q. You got served in that case?

5 A. Yes.

6 Q. You're represented in that case?

7 A. Yes.

8 Q. And I am asking if there's any information  
9 that anybody has provided you other than that?

10 A. No.

11 Q. Okay.

12 A. I haven't had much, if any, information on  
13 that one.

14 Q. Sir, you had an interview with Miss Hupp in  
15 June of 2015; is that right?

16 A. Sounds right.

17 Q. Okay.

18 A. Would have been '15. Yeah.

19 Q. Okay. And how did it come about that that  
20 interview occurred?

21 A. I think that was the one where she -- she  
22 either just showed up or called. I don't know how she  
23 ended up there, but we -- we interviewed her. She  
24 wanted to talk to us, so we talked to her.

25 Q. Okay. Did -- do you recall who was we?

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1 judgment?

2 A. No. I'm not even sure what you're talking  
3 about, so I can --

4 Q. Okay.

5 A. -- say no.

6 Q. Well, let's say that -- I have a right to  
7 know about insurance coverage and --

8 A. Okay.

9 Q. -- sources of payment, so has -- has  
10 Lincoln -- has anybody from Lincoln County told you  
11 anything about that subject?

12 A. No.

13 Q. Okay. You understand that there's a  
14 lawsuit pending?

15 MR. PLEBAN: You are talking about other  
16 than the lawsuit?

17 MR. SCHOCK: That's what I'm -- that's what  
18 I'm getting at.

19 MR. PLEBAN: Yeah. All right.

20 Q. (By Mr. Schock) You understand there's a  
21 lawsuit pending, right?

22 A. The -- in addition? What do -- what do we  
23 call it, the underlining suit?

24 Q. This is the underlining suit.

25 MR. PLEBAN: Yeah.

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1 Who -- who interviewed her?

2 A. I just -- I really just remember Harney and  
3 I being there, Pat and I being there.

4 Q. Okay. Right. Pat Harney, right?

5 A. Yeah.

6 Q. We talked to him yesterday about it?

7 A. Yeah.

8 Q. And do you remember him saying anything  
9 about a theory he had of the case?

10 A. Yeah. I mean, we throw around the ideas  
11 that we have sometimes. Yeah.

12 Q. To witnesses?

13 A. Oh, yeah. We -- yeah. I mean, it's -- I  
14 mean, it's -- it's a volley. It's a dialogue. We just  
15 make conversation.

16 Q. Okay. And you recall that Mr. Harney maybe  
17 told her that he thought Russ had come home and that was  
18 why Pam Hupp had left? Does that ring a bell?

19 A. I remember that being part of it. I mean,  
20 I don't know at what lengths they talked about that.

21 Q. Do you remember why that was -- I mean, I  
22 think he -- I think Mr. Harney said, Merkel and I think,  
23 and sort of described something like that?

24 A. Okay. If -- if he said that, it will be in  
25 a -- I think it's transcribed or --

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1 Q. Yeah. It's transcribed.  
2 A. Okay.  
3 Q. I mean, I'm just giving you a quick, just  
4 kind of --  
5 A. Okay.

6 Q. -- getting to the point here. But did you  
7 in fact think that was so?  
8 A. I don't know if I did or not. I don't  
9 recall having that conversation.

10 Q. Do you -- do you agree with the statement  
11 that sometimes police officers will throw something out  
12 like that to a witness just to see their reaction?

13 A. Yeah. I mean, I can't speak for every  
14 police officer. I mean, some may do it, some may not.

15 Q. Do you do that sometimes?

16 A. It depends on the case. I mean, I -- I  
17 could.

18 Q. Do you -- is that an ethical problem if you  
19 -- if you state something that you would say, Hey, I  
20 think this happened, if it's -- if it's in fact not what  
21 you thought happened?

22 MR. HEIGELE: I'll object as to a legal  
23 conclusion, but --

24 MR. PLEBAN: As a matter of fact, the  
25 courts have held that police officers have the right to

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1 lie to suspects, but independently of that.

2 MR. RETTER: You can answer as to whether  
3 or not it's an ethical problem to you or not.

4 Fair enough, Bevis?

5 A. I would -- I would consider it, I guess, I  
6 mean.

7 Q. (By Mr. Schock) To be what?

8 A. If we're lying to somebody? Yeah. I  
9 don't --

10 Q. That's not good?

11 A. I -- I wouldn't practice it.

12 Q. Okay. Let me ask about some other  
13 principles. Do you agree that in -- in investigations  
14 of homicides, that the officers working on the case  
15 should keep an open mind as to who committed the crime?

16 A. Well, that's with every case. Yeah.

17 Q. Okay.

18 A. I mean, not just homicides. Sure.

19 Q. Right. And consider all facts?

20 A. Yeah. That's -- again, right back to the  
21 beginning, we're fact gatherers.

22 Q. Not ignore facts?

23 A. No.

24 Q. Okay. I mean, you have called yourself a  
25 grunt as though you had no --

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1 MR. PLEBAN: Actually, I did, but --  
2 MR. SCHOCK: No. He did, too.  
3 MR. PLEBAN: Oh, okay.  
4 MR. SCHOCK: That was his word. He -- he  
5 put it in your mind.  
6 MR. PLEBAN: Okay.  
7 Q. (By Mr. Schock) But were you a grunt  
8 throughout this investigation, or did you have some  
9 processes of actual analysis and thought in which you  
10 considered the facts as against the question of who  
11 might have committed the crime?  
12 A. I mean, everything that I developed and --  
13 and cultivated, I -- I knew it was part of a bigger  
14 picture, so, I mean, I would take the facts that I have  
15 and I would give them to somebody and say, Here's your  
16 facts, run with it, and if you have any questions about  
17 it, come back and ask me if it needs clarification.  
18 Q. And you were in some of those meetings we  
19 have already talked about during the four-day call-out,  
20 right?  
21 A. Yeah. I -- I can't say I was in every one,  
22 but, --  
23 Q. Right.  
24 A. -- yeah.  
25 Q. We covered that. Was Miss Askey in some of

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1 those meetings?

2 A. I don't recall.

3 Q. Did you have any conversations with Miss  
4 Askey about theories of the case as to how Mr. Faria  
5 might have committed the crime at any time?

6 A. Not that I recall. No. I mean --

7 Q. Did you have any discussions with Miss  
8 Askey about whether Mr. Faria committed the crime?  
9 A. Yeah. I -- I have maintained I still

10 believe Russ did it.

11 Q. Okay. To this day right now based on all  
12 facts and everything you know?

13 A. Yap.

14 Q. Now, you're aware that -- well, maybe  
15 you're not aware. Let me tell you something Mr.  
16 McCarrick said.

17 A. Okay.

18 Q. He said that all of the police officers in  
19 that call-out, by the end of the call-out, believed that  
20 Russ Faria committed that crime after he came -- he had  
21 driven home after game night, so roughly 9:30 until the  
22 phone call at 9:40 --

23 MR. PLEBAN: Well, hold on. Who wants to  
24 go first?

25 MR. RETTER: I -- I have to at least object

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1 to the extent that mischaracterizes Mr. McCarrick's  
2 testimony.  
3 MR. PLEBAN: It absolutely does.  
4 MR. HEIGELE: And I join.  
5 MR. SCHOCK: Which I don't think it does.  
6 MR. PLEBAN: Oh, okay.  
7 MR. RETTER: And you can answer.  
8 THE WITNESS: Okay.  
9 MR. PLEBAN: We can disagree.  
10 A. Can you start over, please?  
11 Q. (By Mr. Schock) Sure.  
12 A. Okay.  
13 Q. I'll ask it a different way to try to --  
14 A. Okay.  
15 Q. -- soften up these objections. Mr.  
16 McCarrick stated that the officers had reached the  
17 conclusion, based on all the evidence that they  
18 considered, that Mr. Faria committed this murder after  
19 he returned from game night, and he had left the area to  
20 the south about 9:10 or so, gotten there around 9:30,  
21 roughly.  
22 MR. RETTER: Same objection.  
23 MR. PLEBAN: Same objection.  
24 MR. RETTER: Do answer the question.  
25 MR. PLEBAN: I don't think you softened it.

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1 MR. SCHOCK: Please repeat the question,  
2 Tami.  
3 (Reporter read back from the record.)  
4 A. Based on what I know, based on the  
5 information that I have, which I'm not even sure if it's  
6 everything, yeah, I -- I still believe that.  
7 Q. (By Mr. Schock) You believe that he did it  
8 at 9:30 as opposed to earlier in the night?  
9 A. Oh, no. I don't have a timeline. I don't  
10 -- I don't have enough information to determine that.  
11 Q. So you don't have an opinion as to when he  
12 committed that murder?  
13 A. Not -- not a rock solid opinion, no.  
14 Q. What are the factors that you do know that  
15 go into -- that might go into forming an opinion as to  
16 when he committed the murder?  
17 A. Just the things that I have encountered  
18 during the investigation. I mean, I could -- I would  
19 really have to sit down and think about everything. I  
20 just know that that's the opinion that I have  
21 maintained, you know.  
22 Q. Well, do you agree with the statement that  
23 if a guy committed a murder, that the prosecution has  
24 got to figure out roughly when he did it? If -- if  
25 there -- if there are vastly different scenarios of when

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1 MR. RETTER: There wasn't a question, I  
2 don't think, but same objection.  
3 MR. SCHOCK: Okay. Can we let that be  
4 continuing while I finish the question?  
5 MR. RETTER: We sure can. Absolutely.  
6 MR. HEIGELE: Sure.  
7 Q. (By Mr. Schock) Did you reach that  
8 conclusion?  
9 A. I didn't have all the facts at the time. I  
10 wasn't -- I didn't have the amount of exposure McCarrick  
11 did at that time, --  
12 Q. Right now, --  
13 A. -- so I wouldn't have --  
14 Q. -- do you have an opinion about when Mr.  
15 Faria committed this murder that you said you just  
16 believe he did commit?  
17 MR. PLEBAN: I'll object on the basis of  
18 relevancy. It's not reasonably calculated to lead to  
19 the discovery of admissible evidence, and it calls for  
20 conclusion, speculation and conjecture, but subject to  
21 that, have at it.  
22 MR. HEIGELE: Join.  
23 MR. RETTER: I'll join, but do answer the  
24 question.  
25 A. Okay. Can you repeat it?

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1 it could have been done, there ought to be evidence for  
2 one or the other; does that make sense?  
3 MR. HEIGELE: Objection to the point that  
4 it's vague and calls for speculation and conjecture, and  
5 there's no foundation for this witness, but you can go  
6 ahead and answer.  
7 A. Yeah. I think -- I feel like what you keep  
8 asking me is to give one solid answer for every type of  
9 case. I -- I can't -- I can't generalize an answer to  
10 that. I -- I mean -- and I will give this example. So  
11 we've got -- if we have a child abuse case, that -- that  
12 child may only be able to tell us that the leaves on the  
13 tree were brown. So now we've got not a specific date  
14 or even an incremental hour block. We've -- we've got a  
15 season. So, yeah. Yeah. I mean, to have the best  
16 timeline again, I'll go back to Rules of Evidence, I  
17 would prefer to have the best timeline, and if I don't  
18 have enough to develop that, --  
19 Q. (By Mr. Schock) Were you aware that --  
20 A. -- I work with what I've got.  
21 Q. Are you aware that Mr. Faria has been  
22 placed pretty strongly in -- 20, 25 miles south of Sumac  
23 Drive around 9:00?  
24 A. No. I --  
25 Q. First you have heard of that?

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1 A. Well, I don't know where he was actually  
2 placed. I --

3 Q. Well, I mean --

4 A. Just like we discussed before, I know he's  
5 got his -- his witnesses.

6 MR. PLEBAN: Again, Bevis, where are we  
7 going with this?

8 THE WITNESS: I don't know.

9 MR. PLEBAN: I mean, we can -- again, we  
10 can talk about theories all day long, but where -- where  
11 are we going with this -- with this line of questioning?

12 MR. SCHOCK: Are you going to direct him  
13 not to answer?

14 MR. PLEBAN: No. Of course not, but I just  
15 -- man, --

16 THE WITNESS: I don't know.

17 MR. PLEBAN: -- I just don't know where  
18 we're going with it. That's all.

19 MR. RETTER: Well, just -- I -- if I --  
20 just listen to his questions carefully.

21 THE WITNESS: Yeah.

22 MR. RETTER: We may object, but unless  
23 someone tells you not to answer, you think about his  
24 question and answer it. Fair enough?

25 THE WITNESS: Okay. I can do that.

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1 A. -- or, yeah, south.

2 Q. Do you agree with the statement that he  
3 couldn't have committed the murder when he was at  
4 Arby's?

5 A. Well, yeah. If he's standing in Arby's,  
6 yeah, he's not going to kill somebody in a house.

7 Q. So he had to do it either before he went to  
8 Arby's or after; is that true?

9 A. Yeah. That's fair.

10 Q. Okay. Did you ever develop a theory based  
11 on the facts that you know as to whether Mr. Faria  
12 committed the murder before or after he went to Arby's?

13 MR. HEIGELE: Asked and answered.

14 A. No.

15 Q. (By Mr. Schock) No?

16 A. No.

17 Q. Okay. Did you wear any special glasses  
18 during the luminescence test?

19 A. Special glasses?

20 Q. Yeah. Do you wear glasses on that, any  
21 kind of special --

22 A. Like -- like seeing glasses, like these?

23 Q. Not -- not the glasses you normally wear  
24 day to day just to see better, because they're your  
25 prescription glasses, but special glasses that are used

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1 MR. RETTER: Fair enough, Mr. Schock,  
2 Bevis?

3 MR. SCHOCK: Sure.

4 MR. RETTER: Perfect.

5 Q. (By Mr. Schock) Mr. Merkel, you  
6 interviewed Mr. Faria. He said he went -- he went to  
7 Arby's, right, --

8 A. At --

9 Q. -- after game night?

10 A. That was one of the places, I believe.

11 Yes.

12 Q. After game night, right?

13 A. I believe -- I believe it was -- I believe  
14 that was the one that was after game night. I'd have --  
15 yeah.

16 Q. And that's about 20, 25 miles south of  
17 where this murder occurred, right?

18 A. I don't know exactly where it would be, no.

19 Q. Okay. Well, do you know where Mr. Corbin's  
20 house was?

21 A. No.

22 Q. You just don't have any idea?

23 A. No. I -- I don't know if it was -- it was  
24 south of where I am, I mean south of Troy, --

25 Q. Okay.

1 for that test like --

2 A. No. That would -- that would be -- if it's  
3 what I'm thinking you're saying, that would be a  
4 BlueMax. There's a difference. So we have a light,  
5 it's -- it's like a big Maglite, but it's got a -- a --  
6 like a filter, I'm going to call it a filter, and then  
7 you have to view that through special glasses. Is that  
8 kind of what you're asking me?

9 Q. Well, yeah. Was that -- was this that kind  
10 of test or a different --

11 A. No.

12 Q. -- kind of test?

13 A. That's a totally different kind of test.

14 Q. Okay.

15 A. Yeah.

16 Q. Did you ever use the phrase in -- with  
17 reference to the BLUESTAR test results that there was a  
18 trail like a trail of bread crumbs? Did you ever say  
19 that?

20 A. Yeah. I think that's in one of my reports.

21 Yeah.

22 Q. And was it in fact like a trail of bread  
23 crumbs?

24 A. Well, I think we kind of looked at it with  
25 those little spots on the -- the photos. I mean, it

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1 looked like little spots.  
2 Q. Okay. You -- okay. That's fine. Did you  
3 ever check the sink trap?  
4 A. I didn't.  
5 Q. Do you know of anybody who did?  
6 A. I don't know if they were ever checked. I  
7 know they were seized on that -- that same day, that  
8 same search warrant. Well, I'm pretty sure they were  
9 seized.  
10 Q. Did you have --  
11 A. I believe they were.  
12 Q. -- anything to do with it?  
13 A. What's that?  
14 Q. The sink trap at all.  
15 A. No.  
16 Q. Okay.  
17 A. Not that I remember.  
18 Q. You wrote a report about the luminescence  
19 test, right?  
20 A. Yes.  
21 Q. When did you write that?  
22 A. That's -- it was well after the fact. I  
23 think it was -- the -- the date is on the actual report.  
24 Q. So is the date on the report the date you  
25 wrote it?

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1 Q. (By Mr. Schock) Okay.  
2 A. Okay.  
3 Q. Is that a report that you wrote?  
4 A. Looks to be one. Yes.  
5 Q. Okay. Now, at the very bottom, --  
6 A. Mm-hm.  
7 Q. -- it says, Entered by Michael Merkel,  
8 Lincoln County SO. Sheriff's Office or something?  
9 What's SO stand for?  
10 A. Yeah. That would be Sheriff's Office.  
11 Yeah.  
12 Q. Okay. On 4/3/2013, 8:46 a.m., --  
13 A. Yes.  
14 Q. -- right?  
15 A. Yes.  
16 Q. Is that when you wrote it?  
17 A. I don't remember.  
18 Q. Okay. Did you -- what does the word  
19 entered mean?  
20 A. It was put in that system somehow, like  
21 whether it was typed or cut and pasted from a Word  
22 document or something to that effect.  
23 Q. I notice at the top, date and time is  
24 blank?  
25 A. Okay. Yeah.

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1 A. I don't know.  
2 Q. I mean, April, I think it's --  
3 A. I would have to look at it. I don't know.  
4 Q. April 9th, 2013, it was approved by Ryan  
5 McCarrick?  
6 A. Right.  
7 Q. We -- we can look at that. This is Bates  
8 stamped 1967. We might even have the correct book in  
9 front of us. Is this 7?  
10 MR. SWANSON: We do.  
11 Q. (By Mr. Schock) Yeah. Go to 1967, please.  
12 MR. RETTER: Sure.  
13 MR. HEIGELE: Did you say 1967?  
14 MR. SCHOCK: Yes.  
15 MR. PLEBAN: Yes.  
16 MR. HEIGELE: I'm looking -- I'm looking at  
17 a different --  
18 MR. PLEBAN: Yeah. I think he said --  
19 MR. HEIGELE: I think I'm looking at a  
20 different copy from with the other Bates stamp range on  
21 it.  
22 MR. RETTER: Oh.  
23 MR. HEIGELE: Yeah.  
24 MR. RETTER: Supplementary BLUESTAR  
25 forensics PLT 1967.

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1 Q. Do you know why that is?  
2 A. No. I have no idea.  
3 Q. I'm asking you, sir, when you wrote that  
4 report?  
5 A. I don't remember.  
6 Q. You said you wrote -- I think you said a  
7 little earlier you wrote it substantially later?  
8 A. Yeah. Some --  
9 Q. Was that what you --  
10 A. Sometime af -- I mean obviously sometime  
11 afterwards.  
12 Q. After you did it. Yeah.  
13 A. Yeah.  
14 Q. Do you think you wrote it within a week of  
15 the actual test?  
16 A. I don't know.  
17 Q. Do you know why you would or would not have  
18 written the report promptly after the event?  
19 A. No, I don't, other than I just didn't do  
20 it.  
21 Q. It says that Mr. McCarrick approved it on  
22 9th of April '13, so a few days later, six days later,  
23 right?  
24 A. A week later. Yeah.  
25 Q. Did -- did you discuss that report with Mr.

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1 McCarrick?

2 A. I may have. I mean, this -- this wasn't  
3 the only report that we had. I could have discussed  
4 this one with him. I probably just discussed a lot of  
5 cases with him. I don't have any independent  
6 recollection of discussing this one.

7 Q. When you normally submit a report, it has  
8 to be approved by an officer, right, a superior? That's  
9 pretty standard?

10 A. I don't -- I don't remember how this system  
11 worked, so I don't -- I don't know about this particular  
12 system. I could tell you how ours works now and --  
13 yeah, that's --

14 Q. I'm not interested in now. I'm interested  
15 in then.

16 A. Yeah. I don't remember how that worked.

17 Q. Okay. Did you -- do you know how it came  
18 about that on this particular April date, as opposed to  
19 any other date, that you did enter this report?

20 A. No. I don't recall.

21 Q. Don't recall anybody asking you to do it?

22 A. No. I sure don't.

23 Q. You don't -- do you remember whether you  
24 wrote it because somebody asked you around that time?

25 A. No. I don't remember, and, I mean, I very

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1 well could have had -- already had it typed in a Word  
2 document and cut and pasted it over. We do that all the  
3 time.

4 Q. Would your computer show that, when it was  
5 made?

6 A. Now?

7 Q. Yeah.

8 A. I don't have the same computer. I mean,  
9 that -- this is how long ago? This was four years ago,  
10 so I know I don't have the same computer.

11 Q. Did you work on the swabs of Mr. Faria's  
12 hands?

13 A. I don't -- I don't remember if I did or  
14 not.

15 Q. Did you seize his clothes?

16 A. I did read a report where I did that, so  
17 that would be one of the things that I didn't remember.  
18 Yeah. I did.

19 Q. And --

20 A. And nail clippings.

21 Q. And nail clippings? You did do that?

22 A. I think that was -- the clothes and the  
23 nail clippings were all -- it's -- well, at the same  
24 time under the same lead that I wrote.

25 Q. Right. And that's a standard thing to do

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1 on someone who's a murder suspect when it's a violent  
2 situation?

3 A. It could -- it could be. It could be one  
4 of the things we do. Sure.

5 Q. Okay. Do you know who Leah Day and Mariah  
6 Day are?

7 A. I -- you know what, I'm still kind of  
8 confused as if they're Russ' biological children or not,  
9 but they are -- my understanding is that they're Leah's  
10 children or Betsy's children.

11 Q. Yeah. Did you speak to them at all after  
12 the -- well, did you -- when -- when was the first time  
13 -- let me ask the correct question.

14 A. Okay.

15 Q. Have you ever spoken to them?

16 A. Nope. If they fell out of the ceiling  
17 right now, I wouldn't know who they were.

18 Q. Okay. That's what I want to know. All  
19 right. Let me look at some notes here. I think we may  
20 be done.

21 Not quite.

22 Did -- after December 29th, and I may have asked  
23 this, I just want to make sure, did Miss Askey ever tell  
24 you that she needed additional evidence in order to  
25 charge Mr. Faria?

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1 A. No.

2 Q. Did you ever talk to Miss Askey after you  
3 had done that BLUESTAR test in the immediate say that  
4 day or the next day about the test?

5 A. Not that I remember. No.

6 Q. But do you think -- this report you  
7 prepared on it, did you -- did you give a copy of that  
8 to Miss Askey?

9 A. I don't know that I -- I would have. That  
10 would have been part of a larger report that the case  
11 agent would have taken over there.

12 Q. Do you have any idea if Miss Askey ever  
13 learned on January 3rd or 4th about the results of the  
14 BLUESTAR test?

15 A. No idea.

16 Q. But you didn't -- you didn't tell her,  
17 weren't involved in telling her?

18 A. Nope.

19 Q. Your report there that we just looked  
20 at, --

21 A. Mm-hm.

22 Q. -- it doesn't say anything about the house  
23 not having been secure, right?

24 A. I didn't have any knowledge of that, so no.  
25 It doesn't.

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1 Q. You Mirandized Mr. Faria that night, right?  
2 A. I don't specifically recall that. I may  
3 have.  
4 Q. Okay. Why would you have Mirandized him?  
5 MR. PLEBAN: Well, he said he doesn't  
6 recall it, Bevis. Now you're asking him why he did  
7 something that he doesn't recall?  
8 MR. SCHOCK: Well, he didn't totally --  
9 MR. PLEBAN: Show the report.  
10 MR. SCHOCK: I think he didn't -- I know.  
11 I am asking him about it. I don't think he said he for  
12 sure didn't know. I'm asking a follow-up question.  
13 A. I -- yeah. I don't recall --  
14 Q. (By Mr. Schock) Either way?  
15 A. -- specifically doing that. Yeah.  
16 Q. Okay. Do you remember about Mr. Faria  
17 asking to call his mother during that night?  
18 A. Hm-mm. Not specifically. No, sir.  
19 Q. Remember telling him he couldn't call his  
20 mother?  
21 A. No.  
22 Q. That's all -- that's all my questions, sir.  
23 Thank you very much.  
24 A. No problem.  
25 Q. There may be questions from other people

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1 did?  
2 A. No, sir.  
3 Q. Did you -- did you engage in the  
4 preparation of any false statements?  
5 A. No, sir.  
6 Q. Did you make any false statements?  
7 A. No, sir.  
8 Q. Did you do anything other than act in good  
9 faith with respect to your -- the role, limited as it  
10 was, that you played in this case?  
11 A. I did not.  
12 MR. PLEBAN: That's all.  
13 MR. RETTER: That's all I got.  
14 MR. SCHOCK: No follow-up from me.  
15 CROSS-EXAMINATION  
16 QUESTIONS BY MR. HEIGELE:  
17 Q. And, sir, as far as you're concerned, would  
18 those -- as far as your knowledge goes, would all of  
19 those denials of -- of the questions that your counsel  
20 asked, would that apply to all the witnesses that you're  
21 aware of and parties in this case?  
22 A. Yes, sir.  
23 Q. Okay.  
24 MR. RETTER: We'll read and sign.  
25

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1 here.  
2 MR. RETTER: Not here.  
3 MR. HEIGELE: I'm looking. That's why I'm  
4 not --  
5 MR. SCHOCK: Take all the time you need.  
6 MR. HEIGELE: I don't have any questions.  
7 CROSS-EXAMINATION  
8 QUESTIONS BY MR. PLEBAN:  
9 Q. Yeah. Just a few, Mike.  
10 A. Okay.  
11 Q. For the last several days, we have talked  
12 about theories, hypotheticals, et cetera, but let me get  
13 down to the nuts and bolts of this thing. During the  
14 time that you were involved in this case, limited as it  
15 is, did you have occasion to fabricate any evidence at  
16 any time?  
17 A. No.  
18 Q. Did you have occasion to conspire with  
19 anyone to fabricate any evidence?  
20 A. No, sir.  
21 Q. With respect to -- to the role that you  
22 played in this matter, limited as it was, did you act  
23 maliciously in any -- in any regard --  
24 A. No, sir.  
25 Q. -- in connection with anything that you

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1 COURT REPORTING ASSOCIATES  
P.O. Box 440014  
2 St. Louis, Missouri 63144  
(314) 961-6306  
3  
4 October 5, 2017  
5  
6 Jason S. Retter, Esquire  
KING, KREHBIEL & HELLMICH, LLC  
7 2000 South Hanley Road  
St. Louis, Missouri 63144  
8  
9 In Re: Russell Scott Faria -v- Sergeant Ryan J.  
McCarrick, et al. Case No. 4:16-CV-01175-JAR.  
10 Dear Mr. Retter:  
11 Please find in your email inbox the deposition  
transcript of Michael Merkel taken 9/28/17.  
12  
13 Please make arrangements with your client for reviewing  
his testimony, indicating all corrections on a  
correction sheet, and signing the signature page before  
14 a Notary Public.  
15 Please forward corrections, if any, to all counsel of  
record and forward the duly executed signature page to  
16 Attorney W. Bevis Schock at your earliest convenience.  
17 Thank you for your attention to this matter.  
18 Yours truly,  
19  
20 Tami L. Bruder-Ksioszk, RPR, CCR  
21 enclosures  
22 cc: W. Bevis Schock, Esquire  
Christopher L. Heigele, Esquire  
23 Joel D. Brett, Esquire  
Steven R. Kratky, Esquire  
24  
25

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1 Name of Witness:  
2 DEPOSITION CORRECTION SHEET  
3 In re: Russell Scott Faria -v- Sergeant Ryan J.  
4 McCarrick, et al. Case No. 4:16-CV-01175-JAR.  
5 Upon reading the deposition and before subscribing  
thereto, the deponent indicated the following changes  
should be made:  
6 Page Line Should read:  
7 Reason assigned for change:  
8 Page Line Should read:  
9 Reason assigned for change:  
10 Page Line Should read:  
11 Reason assigned for change:  
12 Page Line Should read:  
13 Reason assigned for change:  
14 Page Line Should read:  
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16 Page Line Should read:  
17 Reason assigned for change:  
18 Page Line Should read:  
19 Reason assigned for change:  
20  
21  
22  
23 Deponent:  
24 Page \_\_\_\_ of \_\_\_\_

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1 NOTARIAL CERTIFICATE  
2 STATE OF MISSOURI )  
3 COUNTY OF ST. LOUIS )  
4 I, TAMI L. BRUDER-KSIOSZK, a Registered  
5 Professional Reporter, a Certified Court Reporter and a  
6 duly commissioned Notary Public within and for the State  
of Missouri, do hereby certify that on September 28,  
7 2017, there came before me, at the offices of Barklage,  
Brett & Hamill, P.C., 211 North Third Street,  
St. Charles, Missouri 63301,  
MICHAEL MERKEL,  
who was by me first duly sworn to testify to the truth  
and nothing but the truth of all knowledge touching and  
concerning the matters in controversy in this cause;  
that the witness was there upon carefully examined under  
oath and said examination was reduced to writing by me;  
and that the signature of the witness is reserved by  
agreement of all parties, and that this deposition is a  
true and correct record of the testimony given by the  
witness.  
I further certify that I am neither attorney  
nor counsel for nor related nor employed by any of the  
parties to the action in which this deposition is taken;  
further, that I am not a relative or employee of any  
attorney or counsel employed by the parties hereto or  
financially interested in this action.  
IN WITNESS WHEREOF, I have hereunto set my  
hand and seal on this 5th day of October, 2017.  
My commission expires June 27, 2019.  
NOTARY PUBLIC  
TAMI L. BRUDER-KSIOSZK, C.C.R. No. 1030

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1 o-O-o  
2 COMES NOW THE WITNESS, MICHAEL MERKEL, and having  
3 read the foregoing transcript of the deposition taken on  
4 the 28th day of September, 2017, acknowledges by  
5 signature testimony given on the date hereinabove  
6 mentioned.

7  
8 MICHAEL MERKEL

9  
10 Subscribed and sworn to this \_\_\_\_\_ day of  
11 \_\_\_\_\_, 20 \_\_\_\_\_.  
12

13 My commission expires: \_\_\_\_\_  
14  
15

Notary Public

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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<p>- , -</p> <hr/> <p>'13 8:16 120:22 '15 57:5,7,7 103:18</p> <hr/> <p>- 1 -</p> <hr/> <p>1,000 92:8 100 85:17 1030 131:23 10:30 41:1 10:55 75:14 11:20 100:7 127 2:4 1300 3:17 13th 8:19,20 14 4:4 1763 97:7 1850 98:1,5,6 1863 96:8,21 97:8 1967 118:8,11,13,25 1st 8:14</p> <hr/> <p>- 2 -</p> <hr/> <p>20 79:3 112:22 114:16 130:11 200 4:4 2000 3:23 26:4 128:7 2002 8:13,20 2003 8:20 2004 88:1 2007 8:6 2010 4:11 2011 7:17 13:3 20:1,8 69:15 2013 8:14,15 118:4 2014 57:5 2015 57:8,11 103:15 2017 1:17 3:10 128:4 130:4 131:6,18 2019 131:19 25 78:23 112:22 114:16 27 131:19 2703 53:14 27th 12:25 13:3 28 1:17 3:10 28th 51:24 55:4 56:16 130:4 29th 57:24 76:9 77:17 123:22</p> <hr/> <p>- 3 -</p> <hr/> <p>314 1:25 31st 55:14 60:11 35 88:1,6 3rd 77:24 78:1,2 124:13</p> <hr/> <p>- 4 -</p> <hr/> <p>4/3/2013 119:12 40 30:17 440014 1:24 4:16-CV-01175-JAR 1:8 128:9</p>	<p>4:30 13:19 4th 77:24,24 124:13</p> <hr/> <p>- 5 -</p> <hr/> <p>5 2:3 128:4 52 96:14 5:00 13:19 5th 131:18</p> <hr/> <p>- 6 -</p> <hr/> <p>63105 3:20 63144 128:2 63301 3:12 4:8 131:7 6:00 51:24</p> <hr/> <p>- 7 -</p> <hr/> <p>7 118:9 7777 3:17 7:00 51:24</p> <hr/> <p>- 8 -</p> <hr/> <p>8:30 13:18,19 8:46 119:12</p> <hr/> <p>- 9 -</p> <hr/> <p>911 13:7 41:10 961-6306 1:25 9:00 112:23 9:10 109:20 9:30 108:21 109:20 111:8 9:40 13:8 108:22 9th 118:4 120:22</p> <hr/> <p>- A -</p> <hr/> <p>a.m 75:14 119:12 ability 87:22 able 33:2 64:7 88:17 112:12 about 6:8 7:2 8:6,22 9:11 12:16 17:13 19:9,19 20:15 21:5 22:10,15,17 27:9 29:4,8,15 31:7 32:11 35:12 38:1 39:25 40:4,8,11,25 43:2 46:14, 21 54:19 55:14,14 56:25 57:23 58:25 59:19,23,25 61:2 62:21 63:1 64:11 65:9,12 71:12,18 72:1,2 73:2 76:14 78:9,20 79:22 97:25 101:16 102:3,7,11, 15 103:19 104:6,9,20 106:12 107:16,19 108:4,8 109:20 110:14 111:19 113:10,23 114:16 117:18 121:11,18 124:4,13,22 125:11,16 126:12 above 24:14 26:21 absolute 70:11 Absolutely 6:24 10:21 21:14 22:24 24:12 31:6 37:18 39:3 64:9,12 65:3</p>	<p>69:4 70:15 78:21 94:20 109:3 110:5 abuse 112:11 academic 62:2 63:20 accompanying 17:3 accomplished 69:15 according 55:13 94:11 accurate 56:12 acknowledges 130:4 act 28:22 52:12 87:3 126:22 127:8 action 11:13 131:15 acts 28:20 actual 80:9 107:9 117:23 120:15 actually 9:23 11:25 22:13 59:19 72:2 82:22 93:1,16 107:1 113:1 addition 102:22 additional 123:24 address 12:22,22 14:13 admissible 67:9 110:19 advanced 87:23,23 af 120:10 affected 89:23 after 7:18 13:12 37:20 41:1,15 52:22 54:10 56:17 77:18 90:21,21 92:13,25 99:23 101:17 108:20,21 109:18 114:9, 12,14 115:8,12 117:22 120:12,18 123:11,22 124:2 afternoon 3:11 afterwards 5:6 20:10 120:11 against 9:16,17 11:10,14 69:20 107:10 age 5:10 agency 55:25,25 58:6,8 59:1 agent 73:6 124:11 ago 6:9 27:17 56:13 122:9,9 agree 13:4 19:10 21:14 22:4 28:17,21 33:23 35:18 36:11 38:22,25 94:24 97:18 105:10 106:13 111:22 115:2 AGREED 5:1 73:23 agreement 131:12 agrees 68:7 Ah 91:1 ahead 81:16 100:11 112:6 al 3:7 128:9 all 10:21 12:7 13:2,23 14:24 21:18,19 23:6,9 25:12 26:22 28:6 36:7 44:21 51:14 52:5 53:4,5, 7 55:7 59:9 61:20 62:18 66:25 67:1,5,7 68:2,6 73:14 77:17 79:10,19 80:3,16 81:15 84:6,8 86:17 87:10 89:1 90:8,18 96:20 99:8,15,15,21 102:19 106:19 108:11,18 109:17 110:9 113:10,18</p> <p>117:14 122:2,23 123:11, 18 125:22,22 126:5 127:12,13,18,20 128:13, 15 131:12 Allen 6:5 allocate 25:19 almost 7:15 39:21 98:17 already 31:22 40:4 107:19 122:1 also 5:24 36:25 48:12 91:23 95:16 altogether 66:2 always 55:25 69:20 83:23, 24 101:10,12 ambulances 44:3 among 26:15 amount 30:12 110:10 an 9:9 12:21 13:14 17:3 18:10 19:11 20:4 21:2 22:5,8 23:8,15 25:22 34:16 38:9 40:25 41:1,5, 5 42:18,22 44:15 61:17 63:11 66:4,5 70:11,15 72:11 76:13,16,18 77:15 83:16,20 90:11,13 93:19 103:14 105:18 106:3,15 110:14 111:11,15 112:9, 14 121:8 analysis 107:9 and/or 44:3 94:5 announce 5:15 another 7:25 38:6 47:9 62:14 70:13 answer 65:24 92:3 95:19 106:2 109:7,24 110:23 112:6,8,9 113:13,23,24 answered 115:13 any 6:25,25 9:11,12,13 11:11 14:8 15:11,25,25 17:15 19:10,21 21:14 25:5,10 27:5,9,10 29:15 30:4 31:13,19 33:11 35:14 39:18,18 40:20,20 41:25 46:24 52:7 54:6,7, 16,19,22 56:16,22,22 57:25 58:3,13 62:15 68:7,19 70:22,22 71:6,6 78:4 80:7 86:8,17,24 88:10 89:20,21 92:17 93:10 94:17 95:21 99:2, 22,23,24 100:2,2 101:22, 25,25 103:8,12 107:16 108:3,5,7 114:22 115:17, 20 121:5,19 124:12,24 126:6,15,16,19,23,23 127:4,6 128:15 anybody 38:10 39:25 41:24 44:19 47:13 71:2,9 100:1 102:10 103:9 117:5 121:21 anymore 75:12 anyone 126:19 anything 9:17 11:16 17:14 26:18 33:12,15,22 35:10, 15,23,25 36:1,9 37:8 39:25 40:17 41:24 42:7 45:12 50:18 54:11 56:25</p>
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